

J.J. Kohut #AN1162
ASP/410-18-5L
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In Pro Se

FILED

SEP 01 2023

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

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EASTERN DISTRICT OF CALIFORNIA
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JONATHON J. KOHUT,

Case No.1:22-cv-00472-HBK(PC)

Plaintiff,

42 U.S.C. §1983/28 U.S.C. §1367
CIVIL RIGHTS COMPLAINT; VOLUME
OF EXHIBITS/DECLARATION IN
SUPPORT THEREOF; CAL.CIV.CODE
§52.1; TORTS OF ABUSE OF PROCESS,
NEGLIGENCE, CONSPIRACY, AND
INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS

vs.

M. MARTIN, et al.,

[JURY TRIAL DEMANDED]

Defendants.

FIRST AMENDED COMPLAINT

• Introduction •

This civil rights action is brought pursuant to 42 U.S.C. §1983, by Plaintiff Jonathon J. Kohut, in pro se, currently housed by the CDCR. Allegations contained herein stem from an incident mischaracterized as a 'fight' by PVSP officials, the fabricated reporting of the incident by Defendants, the Due Process violations inflicted and later upheld by Defendants during disciplinary proceedings in adjudication, and finally the Plaintiff's inability to obtain relief through any and all administrative remedies available for the alleged violations of his 1st & 14th Amendment guarantees, his Art. I, §§1 & 7 (U.S.Const.; Calif.Const.), Cal.Civ.Code §52.1(The Bane Act), along with claims for relief for inflicted torts captioned above. Plaintiff is seeking declaratory, injunctive, and monetary relief.

I.

• Venue & Jurisdiction •

1. Claims under 42 U.S.C. §1983 for redress of violations of federal rights by those vested with state authority, this court retains jurisdiction over pursuant to 28 U.S.C. §§1331, and 1343;

2. This court retains jurisdiction over claims for declaratory relief pursuant to 28 U.S.C. §2201, and Rule 57 of the Federal Rules of Civil Procedure;

3. Venue is proper as each violation alleged occurred and/or was carried out

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within the district of filing pursuant to 28 U.S.C. §1391(b)(2).

II.

• Parties •

4. PLAINTIFF; Jonathon Joseph Kohut, currently housed at Avenal State Prison (hereafter ASP), formerly housed at Pleasant Valley State Prison (hereafter PVSP) during times relevant; alleges being denied material witnesses during disciplinary hearing, inter alia, and that CDCR officials, DEFENDANTS, have denied him relief to which he is legally entitled;

5. DEFENDANT; M. Martin, Chief Disciplinary Officer at PVSP during times relevant, refused to acknowledge Plaintiff's entitlement to relief, repeatedly upheld the verdict entered; sued in individual/official capacities;

6. DEFENDANT; Lt. Martin, conducted confidential inquiry in connection with the Plaintiff's allegations of submission of false narratives, notwithstanding the evidence in support of Plaintiff's allegations, entered that no CDCR policy(ies) had been violated; sued in individual/official capacities;

7. DEFENDANT; D. May, Senior Hearing Officer (hereafter SHO), presided over the hearing at issue, denied Plaintiff's request for 4 witnesses on his behalf, failed to enter into the record any reason(s) in support of denial, subsequently claimed that he could not definitively recall any request being made by Plaintiff; sued in individual/official capacities;

8. DEFENDANT; S. Wiswell, authored Rules Violation Report (hereafter RVR) log no. 7083306, alleged to have grossly fabricated his account which has directly and proximately given rise to this litigation; sued in his individual capacity;

9. DEFENDANT; R. Blancas, officer working alongside of S. WISWELL, allegations include submission of a fabricated narrative; sued in his individual capacity;

10. DEFENDANT; M. Reyes, control booth officer, allegations include submission of a fabricated narrative; sued in his individual capacity;

11. DEFENDANT(S); John/Jane Does #1-3 are parties whose true identities are not known to PLAINTIFF at this time. Allegations set forth against these DEFENDANTS include: act(s) of retaliation against the Plaintiff arising from his seeking relief through the 602 process, the conspiring to enter knowingly false statements and/or findings in connection with the allegations set forth throughout this complaint; sued in their individual/official capacities. Upon the ascertainment of the true identities of these DEFENDANTS, PLAINTIFF shall seek leave to amend this complaint to properly

name as parties in this litigation these mentioned DEFENDANTS.

III.

• Exhaustion of State Administrative Remedies •

12. The submitted Volume of Exhibits(hereafter VOE)contains at 4.1, and 4.2, the initial submission of Claim No.21005089 that was noticed by the Department of General Services on 06/07/2021. The claim was denied on 11/24/2021, citing the complexity of issues set forth being with propriety litigated in a court of law. PLAINTIFF has hereby exhausted the claims as they pertained to the circumstances at the time of filing of the claim. PLAINTIFF further alleges, that all requirements for inclusion of state law claims and the parties to which they pertain, have been adhered to, including the 602 process within CDCR.

IV.

• Statement of Factual Allegations •

PLAINTIFF JONATHON J. KOHUT HEREBY ALLEGES:

13. PLAINTIFF, while housed in the oftentimes precarious and potentially violent environment to which he is currently confined, makes cognizant and conscious efforts to avoid any form of violence at all costs. The incident set forth below, is one such example. As the incident itself was unfolding, PLAINTIFF was actively trying to avoid any sort of altercation, and took measures far in excess of which he was obligated to take in his efforts, which ultimately proved to be unsuccessful. With his focus on his Board of Parole Hearings suitability hearing that was upcoming(BPH hearing was scheduled for 04/06/2022), PLAINTIFF retreated across 35 to 40 feet of the dayroom floor before he was forced to defend himself against an advancing attacker that would not relent. Subsequently charged with 'fighting', PLAINTIFF would later be found guilty of the charge during a hearing in which DEFENDANT D. MAY denied PLAINTIFF four requested witnesses that would testify on his behalf, and this DEFENDANT furthermore failed to enter such reasoning for his denial in the findings. PLAINTIFF hereby alleges that the actions of PVSP officials have denied him Due Process under the 14th Amendment, Equal Protection of the law, inter alia, and have inflicted injuries and damages consistent with the claims for relief set

1 forth and enumerated below.

2 • The Incident •

3 14. On the night of April 28, 2021, PLAINTIFF was wiping tables in his housing
4 unit, when at some point he was approached by an individual who was agitated, and
5 was immediately challenging him to a fight.(assailant identified as Jacob Mills,
6 #BH8082) PLAINTIFF declined and went about wiping tables. It is important to note,
7 that it was approximately 8:45 pm and the unit was on restricted movement owing to
8 COVID-19 protocols. PLAINTIFF'S attacker was erroneously let out of his cell and
9 was not supposed to be in the dayroom at all.(see VOE, decl. at ¶¶5-7)

10 15. PLAINTIFF went about and continued on to another table, Mills followed and
11 as PLAINTIFF began to wipe a table, Mills balled up his fists and began swinging at
12 the PLAINTIFF. At this point, there was no staff presence in the dayroom, and the
13 PLAINTIFF raised his left arm as he began retreating from the repetitive swings of
14 his attacker and staying beyond his reach. As Mills continued his attack, PLAINTIFF
15 retreated across approximately 35-40 feet of the dayroom, avoiding no fewer than 8
16 to 10 swings at his face as blows continuously glanced off of his outstretched arm.
17 (see VOE at #3.1.3)

18 16. At some point, PLAINTIFF in his peripheral, noticed DEFENDANTS S. WISWELL,
19 and BLANCAS exit the office and take notice of the events taking place. As swings from
20 Mills continued, the alarm was activated and DEFENDANTS began to yell orders to,
21 "get down!get down!" These factors had no bearing on the attack that continued, and
22 at some point one of Mills' knuckles grazed the lip of the PLAINTIFF.(see VOE at
23 decl. ¶¶9-11,13)

24 17. While still in retreat, PLAINTIFF returned a single blow that struck Mills
25 in his left orbital region, knocking him to the ground. PLAINTIFF maintained his
26 focus on Mills who had landed on his rear, and as his eyes refocused, immediately put
27 his hands underneath himself in an attempt to rise to his feet. PLAINTIFF leaned
28

forward anticipating further attack and at that precise moment, DEFENDANT S. WISWELL pepper sprayed PLAINTIFF directly in his face and neck which caused him to prone out immediately. As PLAINTIFF was proned out, DEFENDANT S. WISWELL delivered another burst of pepper spray to the back of PLAINTIFF'S head, and the backs of his hands, and thereby ending the incident. (see VOE at decl.¶¶12,14-15)

18. After being sprayed, responding staff(not named)escorted PLAINTIFF to the D Facility gym for decontamination, and for medical evaluation.(see VOE Ex.#1.1-2, decl.¶15)

19. On 04/30/2021, PLAINTIFF received his initial copy of the RVR log no.7083306 which prompted his submission of 602 log no.#114099(see Ex.#2.1.1-4, and #3.1.1-7, respectively)through which PLAINTIFF made his requirement of witnesses on his behalf for adjudication purposes abundantly clear. In addition, he directly challenged the narrative submitted by DEFENDANT S. WISWELL.

20. Subsequent to the issuance of the initial RVR, PLAINTIFF was issued an incident log package(log no.#21670), with three narratives submitted by DEFENDANTS present during the incident.(see Ex.#2.2.1-3) An additional 602 was submitted(log no.#125056, not included)essentially challenging the accounts submitted by the DEFENDANTS R. BLANCAS, and M. REYES.

• The Disciplinary Hearing •

21. On 05/21/2021, a disciplinary hearing was held in adjudication of RVR log no. #7083306, with DEFENDANT D. MAY serving as the SHO. During this hearing, PLAINTIFF made a specific request to have 4 witnesses testify on his behalf. These witnesses would have provided testimony in support of PLAINTIFF'S position of self defense. PLAINTIFF provided his account, and without summoning a single witness, DEFENDANT D. MAY found PLAINTIFF guilty of the charge of 'fighting'. Available and at the SHO's disposal were not only the witnesses requested, but also alternate means of appearing such as telephonically, and/or Zoom/Skype.(neither form would have been necessary for

1 each witness requested was housed in the same unit as the PLAINTIFF at the time of
2 the hearing) DEFENDANT D. MAY, PLAINTIFF hereby alleges both failed to summon the
3 witnesses requested, and moreover, failed to enter any reason in the findings that
4 would explain the reasoning relied upon for such a denial. For these two reasons in
5 support, PLAINTIFF alleges that DEFENDANT D. MAY effectively violated PLAINTIFF'S
6 right to procedural and substantive Due Process under the 14th Amendment of the U.S.
7 Constitution, Art.I, §7 of the California Constitution, and §52.1 of the Cal.Civ.
8 Code(The Bane Act). PLAINTIFF did not receive a fair hearing.

9 22. PLAINTIFF further alleges, that the narratives submitted by DEFENDANTS
10 S. WISWELL, R. BLANCAS, and M. REYES were comprised of numerous fabrications and
11 falsities that effectively provided DEFENDANT D. MAY with a false account of what
12 actually took place, and that have essentially given rise to the allegations set
13 forth throughout this complaint. These narratives formed the basis of the information
14 utilized and relied upon by DEFENDANT D. MAY to arrive at, and to subsequently enter
15 a finding of guilt. Moreover, the narratives also served to provide the basis for
16 DEFENDANT M. MARTIN to repeatedly uphold the findings despite numerous attempts by
17 the PLAINTIFF to obtain administrative relief. PLAINTIFF further alleges, that under
18 California law, DEFENDANTS S. WISWELL, R. BLANCAS, and M. REYES have perpetrated a
19 misdemeanor against the PLAINTIFF, and insodoing have caused the PLAINTIFF actual
20 injuries and damages in the forms of; loss of good conduct credits, a violent guilty
21 finding being currently maintained in PLAINTIFF'S central file, and as a result, have
22 adversely affected the legal standing of the PLAINTIFF with respect to suitability
23 proceedings before the BPH. The narratives that are now a part of the PLAINTIFF'S
24 permanent record, contain degrees of prejudicial and false compositions within their
25 scope that the PLAINTIFF simply cannot overcome during a suitability hearing.

26 • Materiality of Witness Testimony Denied •

27 23. PLAINTIFF'S request for 4 witnesses during the hearing was made for the sole
28 purpose of providing the SHO with a truthful account of what actually took place. The

discluded testimony would have provided support of the PLAINTIFF'S version to wit;

1) PLAINTIFF was reacting in self defense and was warding off an attack; 2) The floor officers, DEFENDANTS S. WISWELL, and R. BLANCAS were in the office at the time the incident took place initially, and they not only fabricated their accounts, but also they did not see the inception of the event; 3) That at no time were Mills and the PLAINTIFF trading blows to the 'face and torso', as alleged by DEFENDANTS S. WISWELL, R. BLANCAS, and M. REYES, and that PLAINTIFF swung at his attacker a single time; 4) At no point did Mills ever make any attempt to cover himself up while on the ground as DEFENDANT S. WISWELL claimed(see Ex.#2.1.1,2.2.1), and 5) That DEFENDANT S. WISWELL sprayed PLAINTIFF initially, and then sprayed PLAINTIFF an additional time after the PLAINTIFF had already proned out and the incident had effectively been contained. PLAINTIFF hereby alleges that the refusal of the SHO DEFENDANT D. MAY to summon the witnesses requested by the PLAINTIFF effectively denied him the opportunity to establish his evidence in support, and that furthermore, the evidence relied upon in support of the findings would have been challenged directly, and called into question.(see #4 at 7:7-9 above, also comment 1 at Ex.#2.3.5)

24. PLAINTIFF further alleges that DEFENDANT D. MAY, with intentional malice and ill will, ignored the inconsistencies that PLAINTIFF pointed out with respect to the accounts provided by DEFENDANTS present during the incident, and the medical reports submitted by medical personnel(Ex.#1.1-2; and also 2.1.1, 2.3.1-3), which readily render apparent that there are many discrepancies and/or inconsistencies contained within the reports utilized to find PLAINTIFF guilty, most glaringly the lack of any injuries consistent with the accounts provided and relied upon. Plaintiff further alleges that DEFENDANT D. MAY in no way adhered to state and/or federal controlling authorities that govern disciplinary hearings in an institutional setting, insofar as those authorities pertain to impartiality that is required on the part of those whom sit in adjudicatory capacities during such proceedings. PLAINTIFF alleges that this particular DEFENDANT not only knew his subordinates had falsified their reports, but such knowledge served to prevent him from summoning the witnesses requested.

25. PLAINTIFF further alleges that the 602 process at PVSP, and subsequently the CDCR Office of Appeals(hereafter OOA)in Sacramento, essentially have ignored the plethora of substantive and procedural due process violations set forth by the 602's submitted regardless of evidentiary support proffered, and that the process serves essentially as a token process that avoids liabilities, and provides no form of tangible or even figurative relief, regardless of the merit of PLAINTIFF'S claims. The process is all about the amelioration of the wrongdoing on the parts of their colleagues, plain and simple.

• The 602 Grievance Procedure •

26. PLAINTIFF began to submit 602's immediately upon receiving the initial copy of RVR log no.#7083306(Ex.#2.1.4, also 3.1.1-6) PLAINTIFF alleged staff misconduct stemming from the submission of the false narratives aforementioned, and as a result a confidential inquiry was initiated.(see also narratives at Ex.#2.2.1-3) DEFENDANT LT. MARTIN was assigned to conduct the inquiry pursuant to 15 CCR §3084.9(i)(3)(B). DEFENDANT LT. MARTIN was charged with interviewing staff and inmates in connection with the inquiry. This inquiry resulted in a finding that staff had violated no CDCR policy(ies). PLAINTIFF hereby further alleges that the process was a farce, and that it was a simple exercise in going through the motions, without any degree of any fair consideration and/or impartiality.

27. Subsequent to the interviews conducted by DEFENDANT LT. MARTIN of selected inmates, selected by himself after being advised by DEFENDANT R. BLANCAS, PLAINTIFF had occasion to speak with some of those interviewed, and was informed that not only had this DEFENDANT failed to record anything in writing, but also that this process was kept entirely secret from the PLAINTIFF insofar as evidence relied upon, and/or gleaned in the process resulting in the finding of no policy violation(s). Upon information and belief, not only was information provided in support of PLAINTIFF'S version of events, but that this DEFENDANT acted in conspiracy with other officials in an intentional and malicious effort to deny PLAINTIFF relief to which he was

1 entitled under the law.

2 28. PLAINTIFF also submitted 602 log no.#123815(Ex.#3.2.1-8)challenging the guilt
3 finding of DEFENDANT D. MAY. This process revealed a part of what was withheld from
4 the PLAINTIFF with respect to the inquiry aforementioned above. The Office of
5 Grievances(hereafter OOG) at PVSP, revealed that DEFENDANT D. MAY had ~~stated~~ that
6 he could not recall whether or not witnesses were requested by the PLAINTIFF. With
7 blatantly and stark misstatement of the facts submitted by the PLAINTIFF in his 602,
8 the OOG at PVSP denied his request for relief.(see Ex.3.2.3-4, cf. Ex.3.2.1-2, sec.
9 A., explanation of issue)

10 29. PLAINTIFF hereby alleges that the confidential inquiry into the allegations
11 of false reports being submitted by DEFENDANT S. WISWELL, R. BLANCAS, and M. REYES,
12 was carried out and conducted in a manner inconsistent with the purpose for which it
13 is actually intended under the controlling authority(15 CCR) by DEFENDANT LT. MARTIN
14 who was in charge of the inquiry. PLAINTIFF alleges that not only was he wrongfully
15 found guilty based upon falsified and fabricated accounts, but that any request for
16 relief failed to uncover the evident wrongdoing and falsification of reports by the
17 aforementioned DEFENDANTS. PLAINTIFF further alleges, that DEFENDANT LT. MARTIN did
18 in fact wilfully ignore information provided during the inquiry process, furnished
19 by eye witnesses to the events at issue taking place on 04/28/2021, that supported
20 the PLAINTIFF'S version of events, and that supported his allegations of staff
21 misconduct on the part of the three DEFENDANTS present at the time of the incident,
22 and their fabricated accounts submitted.

23 30. PLAINTIFF further alleges, that DEFENDANTS D. MAY, LT. MARTIN, and M. MARTIN
24 had adequate facts and documentation within their possession to 1) Enter an alternate
25 finding, 2) Order a rehearing of the charge, 3) Find in favor of the PLAINTIFF on
26 the basis of the accounts submitted by DEFENDANTS were unethical and fabricated, 4)
27 Enter alternative findings consistent with those set forth in 15 CCR§3312(b)(1)-(2).
28 These particular DEFENDANTS, in concert, relied on information that they knew, or

1 or should have known, was false in nature, and that did not comport with the
 2 findings of medical personnel, an unethical violation of CDCR policy and procedure.
 3 (see 15 CCR§3286) Such reliance denied PLAINTIFF both a fair disciplinary hearing,
 4 and contaminated the confidential inquiry into meritorious claims of staff misconduct
 5 as the result of the fabricated accounts mentioned throughout this complaint. These
 6 reports have been detrimental to PLAINTIFF'S legal standing before the BPH, and
 7 PLAINTIFF further alleges that reliance on these accounts has denied him protections
 8 under the law pertaining to ethical standards, Due Process and Equal Protection.
 9 (15 CCR §§3270, 3286, 3391(a), 3413(a)(6)(A),(c))

10 31. PLAINTIFF further alleges that DEFENDANT M. MARTIN has essentially refused to
 11 grant fair consideration to the evidence relied upon as the Chief Disciplinary
 12 Officer who ratifies the findings of his subordinates. PLAINTIFF at some point opted
 13 to contact the CDCR Office of Internal Affairs(hereafter OIA). In a very candid and
 14 detailed letter, PLAINTIFF explained exactly what his issues were, and exactly what
 15 took place.(see Ex.#5.1.1-4) In response, the OIA took no action, but they instead
 16 chose to send the PLAINTIFF'S letter directly back to DEFENDANT M. MARTIN, who then
 17 issued the response attached as Ex.#5.2.1. As evidenced by the letter authored in
 18 response to the letter to OIA authored by the PLAINTIFF, DEFENDANT M. MARTIN is
 19 entirely unwilling to accept or consider that the accounts proffered by the named
 20 DEFENDANTS were substantially contradictory in terms of events witnessed, as well
 21 as completely unsupported by medical personnel's findings and observations pertaining
 22 to injuries found on either PLAINTIFF or Mills.

23 • Summary of Allegations •

24 32. PLAINTIFF hereby alleges that DEFENDANTS S. WISWELL, R. BLANCAS, and M. REYES
 25 submitted inaccurate and fabricated accounts, conspired and collaborated to arrive
 26 at a version of events with the intent to provide their superiors a false account of
 27 what took place, and that their reports served to justify a use of force that was not
 28 required
 necessary, and to further provide a semblance to their superiors of diligence and

1 and dutiful supervision that were in fact non existent during the events described
2 throughout this complaint. Such submissions in turn fostered a reliance on false
3 accounts that resulted in a miscarriage of justice in connection with the finding
4 of guilt arrived at. The fabricated accounts, in tandem with DEFENDANT D. MAY'S
5 denial of witnesses on the PLAINTIFF'S behalf, effectively denied the PLAINTIFF'S
6 rights to Due Process of law during the disciplinary hearing, under both state and
7 federal authorities, as well as administrative regulations contained within the 15 CCR
8 applicable sections.

9 33. Upon information and belief, DEFENDANT D. MAY, partially, and intentionally
10 denied the PLAINTIFF the four witnesses requested during the adjudication hearing
11 of RVR log no.#7083306, and moreover, DEFENDANT D. MAY intentionally ignored the
12 readily apparent inconsistencies in the reports submitted by DEFENDANTS(1132) insofar
13 as such pertained to the recorded observations of medical personnel(see 7219 forms,
14 Ex.#1.1-2); that not only called into question the integrity of the reports used
15 to support the finding of guilt, but also displayed no degree of injury consistent
16 with the reports submitted. DEFENDANT D. MAY intentionally, with ill will and/or
17 malice, applied factors in support of a guilt finding that were obviously false in
18 nature, and did not support a finding of guilt resulting from a preponderance of
19 the evidence as required by statutory authority, as well as administrative
20 regulations governing the adjudication of disciplinary accusations in the State of
21 California in any institutional/prison setting.

22 34. PLAINTIFF further alleges that Due Process and Equal Protections have been
23 denied him throughout both the confidential inquiry process, as well as throughout
24 the subsequent review of the finding of guilt by DEFENDANTS M. MARTIN, and by
25 DEFENDANT LT. MARTIN(PLAINTIFF is uncertain of familial relation at this time of
26 the identically surnamed DEFENDANTS). Both processes aforementioned were carried
27 out in such manner as to provide complete and unfettered support of their colleagues
28 whom either submitted a report and/or supplementary account of the events, or that

1 ratified the findings of DEFENDANT D. MAY, being completely aware of the PLAINTIFF'S
2 grievance pertaining to the denial of witnesses during the proceedings mentioned
3 throughout this complaint.

4 35. PLAINTIFF further alleges that actual injuries and damages have been
5 inflicted upon him giving rise to an actual controversy involving the parties rights,
6 duties, and obligations under both state and federal law, and that for which he has
7 no adequate remedy at law. PLAINTIFF respectfully contends that absent the
8 intervention of this court, the status quo regarding the prejudicial information
9 being maintained in his central file, will continue to inflict injury and/or
10 damages upon the PLAINTIFF owing to the culture and customs that exist within the
11 department maintaining legal custody of the PLAINTIFF.

12 . • Verification • .

13 36. I Jonathon J. Kohut, PLAINTIFF in the entitled action, am the true author of
14 the factual allegations set forth in this complaint, and have composed such from
15 my own first hand personal recollection(s).

16 37. I Jonathon J. Kohut, PLAINTIFF in the entitled action, have personally
17 compiled the documentary exhibits/declaration submitted by volume, which are cited
18 throughout this complaint, and are incorporated by reference.

19 38. That for purposes of any motion filed under Rule 56, Fed.R.Civ.P., this
20 action contains deliberate indifference allegations involving state of mind questions
21 appropriately decided by juries, and that this paragraph serves as a running
22 objection to any motion/cross motion for summary judgement submitted during the
23 course of this litigation.

24 Under the penalty of perjury, pursuant to 28 U.S.C. §1746, and the laws of
25 the State of California, I hereby declare the foregoing is true and correct, and
26 any portion set forth upon information and belief is/are true to the best of my
27 knowledge, believed to be true, and has/have been submitted in the utmost of good
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1 faith.

2
3 X

4 Jonathon J. Kohut,
5 Plaintiff,
6 In Pro Se.

Dated: 8/27/2023

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• CLAIMS FOR RELIEF •

CLAIM ONE

(42 U.S.C. §1983/14th Amendment, U.S. Const./Due Process Violations)

39. PLAINTIFF realleges the allegations of ¶¶1-38, incorporated as if fully set forth herein.

40. DEFENDANTS M. MARTIN, LT. MARTIN, and D. MAY, during all times relevant, were acting under the color of state law, and within the scope and course of their employment as agents/officials of CDCR.

41. Under the Due Process clause of the 14th Amendment to the U.S. Constitution, PLAINTIFF had a fundamental right to summon witnesses on his behalf during the disciplinary hearing held on 05/21/2022, to present evidence, to have an impartial decision maker preside over the proceedings, and to have a decision rendered based on a preponderance of the evidence submitted in connection with the proceedings.

42. DEFENDANTS M. MARTIN, LT. MARTIN and D. MAY, knew, or should have known, that PLAINTIFF'S rights as set forth above(¶41), were a procedural requirement under the 14th Amendment, as well as statutory authorities, and administrative regulations contained within the 15 CCR.

43. DEFENDANTS at all times relevant, acted in concert while collaborating as colleagues and despite repeated attempts by the PLAINTIFF to obtain relief through the 602 process, these DEFENDANTS repeatedly upheld the finding of guilt entered by DEFENDANT D. MAY, and they did so in violation of PLAINTIFF'S right to due process under the 14th Amendment of the U.S. Constitution.

1 44. DEFENDANTS actions and/or courses of conduct were objectively unreasonable,
2 and these DEFENDANTS knew, or should have known that their actions and inactions,
3 created an unreasonable and significant risk of foreseeable and serious injury to
4 the PLAINTIFF'S legal standing before the BPH, and thereby have exhibited deliberate
5 indifference to PLAINTIFF'S rights under the 14th Amendment of the U.S. Constitution
6 and the due process clause.

7 45. These DEFENDANTS actions and inactions were willful, intentional, malicious,
8 wanton, and dispicable in conscious disregard of the rights of the PLAINTIFF'S
9 rights thereby entitling PLAINTIFF to exemplary and/or punitive damages.

10
11 CLAIM TWO

12 (Article I, section 7, Calif. Const./Due Process Violations)

13 46. PLAINTIFF realleges the allegations of ¶¶1-45, incorporated as if fully set
14 forth herein.

15 47. In failing to summon PLAINTIFF'S requested witnesses during the proceedings
16 mentioned above, DEFENDANT D. MAY violated PLAINTIFF'S right to due process under
17 Article I, §7 of the California Constitution.

18 48. DEFENDANTS M. MARTIN, and LT. MARTIN, upon being presented with PLAINTIFF'S
19 requests for relief pertaining to the failure of DEFENDANT D. MAY to afford
20 PLAINTIFF witnesses during the hearing mentioned above, and the false and fabricated
21 accounts submitted by DEFENDANTS S. WISWELL, R. BLANCAS, and M. REYES, failed to
22 take remedial actions at their disposal, and insodoing, effectively violated
23 PLAINTIFF'S right to due process, and truth in proceedings.

24 49. PLAINTIFF'S injuries and violations of his constitutional rights were directly
25 and proximately caused by the actions and inactions, conduct, and attitudes of these
26 three DEFENDANTS, which were and are the moving force of the violations.

27 50. As a result, PLAINTIFF seeks declaratory relief against all DEFENDANTS to
28

1 declare their having violated Article I, sections 7, and 28 of the California
2 Constitution.

3 CLAIM THREE

4 (California Civil Code §52.1/Violations of The Bane Act)

5 51. PLAINTIFF realleges the allegations of ¶¶1-50, incorporated as if fully set
6 forth herein.

7 52. By their actions described above, DEFENDANTS acting in concert and/or
8 conspiracy, with threat, intimidation, and/or coercion, violated the PLAINTIFF'S
9 rights under Cal.Civ.Code §52.1, The Bane Act, by interfering with the PLAINTIFF'S
10 rightful exercise or enjoyment of PLAINTIFF'S clearly established rights secured by
11 the Constitutions and laws of the United States, and the State of California. The
12 DEFENDANTS' actions have caused actual damages within the meaning of Cal.Civ.Code
13 §§52, and 52.1.

14 53. PLAINTIFF'S injuries and the violations of his constitutional rights were
15 directly and proximately caused by the unofficial practices and policies of the
16 DEFENDANTS, which were and are the moving force of the violations.

17 54. As a direct and proximate result of the conduct of the DEFENDANTS, PLAINTIFF
18 is entitled to an award of exemplary damages, civil penalties, attorney's fees, and
19 paralegal fees as provided by Cal.Civ.Code §§52, and 52.1.

20 CLAIM FOUR

21 (Tort of Abuse of Process)

22 55. PLAINTIFF realleges the allegations of ¶¶1-54, incorporated as if fully set
23 forth herein.

24 56. PLAINTIFF hereby alleges that DEFENDANTS have utilized the RVR process in
25 violation of California Constitution, Article I, section 28(f)(2), PC§2932, 15 CCR
26 §§3286, 3005(d)(1), respectively by their submission of false reports, the failure
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1 to summon PLAINTIFF'S requested witnesses on his behalf, the failure to provide the
2 PLAINTIFF with an impartial decision maker during adjudicatory proceedings, the
3 failure to reach a decision by preponderance of the evidence, and the repeated denial
4 of administrative relief subsequent to a finding of guilt being entered in violation
5 of established authorities governing disciplinary hearings in CDCR when liberty
6 interests are potentially affected and/or in jeopardy.

7 57. Each DEFENDANT in this action acted in a manner that was ulteriorly motivated
8 and wholly unrelated to the lawful purpose for which the RVR process has been
9 implemented within the institutions comprising the CDCR, and its legally intended
10 usage pursuant to PC§§2932, and 5054, 5058 et seq, and thereby injuring PLAINTIFF.

11 PLAINTIFF hereby alleges that DEFENDANTS, having been duly sworn as peace officers
12 of the State of California, in carrying out the courses of conduct described
13 throughout this complaint, have acted with ill will, malice, and have intentionally
14 fabricated material facts relied upon during proceedings in adjudication, and have
15 moreover, exhibited deliberate indifference towards the rights of the PLAINTIFF,
16 and with reckless disregard for his guaranteed rights under constitutional
17 provisions, as well as statutory authority, and finally administrative regulations.

18 58. PLAINTIFF further claims that DEFENDANTS S. WISWELL, R. BLANCAS, and M. REYES,
19 authored fabricated reports in connection with the RVR and hearing in adjudication
20 mentioned throughout this complaint, to the injury and detriment of the PLAINTIFF,
21 and that these DEFENDANTS did so knowingly, and fully aware of the risk of harm to
22 the PLAINTIFF, and with conscious disregard to PLAINTIFF'S rights, and the lawful
23 purpose for which the procedure has been sanctioned under California law.

24 59. DEFENDANTS M. MARTIN, LT. MARTIN, and D. MAY, notwithstanding numerous
25 evidentiary factors weighing in PLAINTIFF'S favor, denied PLAINTIFF a fair hearing
26 by failing to summon requested witnesses, failed to act upon inconsistent and false
27 reports submitted by DEFENDANTS S. WISWELL, R. BLANCAS, and M. REYES, and further
28

1 refused to take remedial actions/measures subsequent to PLAINTIFF'S submission of
2 no fewer than four 602's seeking administrative relief to which he was rightfully,
3 and legally entitled.

4 60. Each DEFENDANT had departmental duties imposed under the CDCR Department
5 Operations Manual(DOM §§33030.3.1,2 & 3), regarding the performance of their job
6 description(s), and their flagrant and intentional disregard of such obligations
7 contributed to their state of mind, and their willingness to inflict the tort of
8 abuse of process upon the PLAINTIFF.

9 61. DEFENDANTS' conduct, actions, omissions, attitudes, and conscious disregard
10 to the injury and damage inflicted upon the PLAINTIFF were carried out intentionally,
11 with ill will, malice, and with deliberate indifference to the rights of the
12 PLAINTIFF, thereby justifying an award of exemplary and/or punitive damages.

13
14 - CLAIM FIVE
15 (Tort of Conspiracy)

16 62. PLAINTIFF realleges the allegations of ¶¶1-61, incorporated as if set forth
17 fully herein.

18 63. DEFENDANTS S. WISWELL, R. BLANCAS, and M. REYES intentionally, with malice,
19 and with conscious disregard for the rights of the PLAINTIFF, proceeded on 04/28/
20 2021 to submit fabricated reports, false in nature and character, in agreement and
21 in collaboration, directed to their superiors, that attributed to the PLAINTIFF his
22 willful and intentional participation in an altercation, physically violent in
23 nature, and resulted in his being charged with 'fighting', in violation of 15 CCR §
24 3005(d)(1).

25 64. DEFENDANTS' agreement was carried out to the detriment of the PLAINTIFF, for
26 unethical purposes that were consistent with reporting a non factual scenario that
27 displayed dutiful vigilance in their job performance to their superior officials.
28

1 65. DEFENDANTS M. MARTIN, LT. MARTIN, and D. MAY, furthered the conspiracy, while
2 lending aid and encouragement to and/or ratifying the acts of their subordinate
3 officials/colleagues set forth above by violating PLAINTIFF'S right to summon
4 witnesses on his behalf during the hearing mentioned throughout this complaint, by
5 ignoring glaring inconsistencies contained within DEFENDANTS' narratives of the
6 incident and the lack of injuries sustained by either individual, and by their
7 repeated denials of administrative relief sought including, but not limited to;
8 affording PLAINTIFF a new hearing to allow witnesses requested, dismissal of the
9 charge, a finding that DEFENDANTS had in fact submitted falsified reports in
10 violation of CDCR policy, or any other form of relief that would undo the miscarriage
11 of justice suffered by the PLAINTIFF and the injuries suffered as a direct and
12 proximate result of the DEFENDANTS' actions, inactions, omissions, and courses of
13 conduct.

14 66. DEFENDANTS, as a result of their courses of conduct, have inflicted general
15 damages upon the PLAINTIFF, and have acted with malice, ill will, and oppression
16 within the meaning of Cal.Civ.Code §3294, in conscious disregard for the rights of
17 the PLAINTIFF, thereby entitling PLAINTIFF to an award of exemplary and/or punitive
18 damages.

19 CLAIM SIX

20 (Tort of Negligence)

21 67. PLAINTIFF realleges the allegations of ¶¶1-66, incorporated as if fully set
22 forth herein.

23 68. DEFENDANTS have, and had a duty as peace officers of the State of California
24 being duly sworn, to perform their occupational functions in an ethical manner in
25 accordance with statutory authorities, administrative regulations, and even CDCR
26 policies. With their employment/agency comes an inherent duty to report incidents
27 in accordance with Article I, section 28(f)(2), the 'Truth-In-Evidence' clause of
28

1 the California Constitution, as well as 15 CCR §3286, and the lawful conduct that
2 is becoming of a sworn peace officer in the State of California.

3 69. DEFENDANTS had a duty of care, owed the PLAINTIFF, to abide by the 15 CCR,
4 DOM, PVSP-OP Manual, and the 'Truth-In-Evidence' clause of the California
5 Constitution, in conjunction with the Penal Code, as well as the Government Code
6 that function alongside the aforementioned authorities.

7 70. Each DEFENDANT named in this complaint, has breached their duty of care owed
8 the PLAINTIFF pursuant to Cal.Evid.Code §669, rendering negligence presumed, and
9 that such breaches have inflicted injuries and damages upon the PLAINTIFF that
10 have directly and proximately been caused by DEFENDANTS' acts and omissions.

11 71. The injuries and damages suffered by the PLAINTIFF were foreseeable in nature
12 and but for the negligence of the DEFENDANTS, PLAINTIFF would not have been injured.

13 72. DEFENDANTS conduct was objectively unreasonable, and was carried out with ill
14 will, malice, intentionally, and with reckless disregard for the rights of the
15 PLAINTIFF thereby entitling the PLAINTIFF to an award of exemplary and/or punitive
16 damages.

17
18 CLAIM SEVEN

19 (Tort of Intentional Infliction of Emotional Distress)

20 73. PLAINTIFF realleges the allegations of ¶¶1-72, incorporated as if set forth
21 fully herein.

22 74. DEFENDANTS are/were during all times relevant, CDCR officials, a state agency
23 pursuant to the law of the State of California, and duly sworn peace officers of
24 California. By virtue of such employment/agency, comes authority and/or privilege
25 with corresponding wielding of processes associated with, and consistent with such
26 duty and performance in their respective capacities. In short, these DEFENDANTS
27 have the vested ability and authority to charge, impose, attach, adjudicate, review,
28 amend, uphold, and/or vacate findings consistent with the lawful disciplinary

1 sanctioning of those individuals within the CDCR that have been charged with any
2 administrative or serious rule violation while in the custody of the CDCR.

3 75. Disciplinary sanctions imposed by any finding of guilt in connection with
4 the RVR process within the CDCR, implicate liberty interests demanding certain
5 due process protections, and also bring collateral consequences aside from loss
6 of good time credits and/or privileges, and statutory authorities and administrative
7 regulations govern alongside of constitutional provisions such procedures that serve
8 to adjudicate such RVR's.

9 76. Since the incident, and the subsequent events described throughout this
10 complaint, PLAINTIFF has been in a constant state of emotional distress owing to
11 what he considers to be unethical, conspiratorial, dishonest, and oppressive conduct
12 that has been carried out by DEFENDANTS. PLAINTIFF further alleges, that their
13 conduct was and is outrageous, egregious, and per se constitutes an abuse of their
14 vested discretion that comes with their agency/employment as CDCR officials.

15 77. DEFENDANTS' conduct was intentional, and was carried out with the sole aim
16 and purpose of causing anguish and/of humiliation to the PLAINTIFF, and has been the
17 topic of focus in many of the meetings with his clinician that he sees regularly as
18 a treatment regimen in the CCCMS(mental health services)program within the CDCR.

19 78. PLAINTIFF'S distress has been, and still is severe in nature and scope, and
20 comes as the direct and proximate result of reaching the realization that those who
21 have custody of him have the capacity, ability, and even the willingness to enter
22 wrongful and unethical findings in his c-file, and that the 602 grievance process
23 serves no purpose for those with meritorious claims seeking relief. PLAINTIFF'S
24 distress has been exacerbated by the ostensible and unethical courses of conduct
25 carried out by the DEFENDANTS, and their vehement defense of blatantly flagrant
26 violations of CDCR policy(ies) pertaining to RVR reporting, the adjudication of such,
27 and the continuous failure to provide relief and/or accountability in the face of
28 starkly obvious dereliction(s) of duty, and unethically substandard performance of

1 duties of both rank and file officials, as well as administrative level officials
2 employed by the CDCR, i.e. DEFENDANTS.

3 79. PLAINTIFF'S distress has been further exacerbated by the very real fact that
4 the information now contained within his c-file, which shall be reviewed by the BPH
5 during future suitability hearings, is of a nature and character that not only has
6 depicted the PLAINTIFF as being somewhat of an aggressor, but that also depicts him
7 as having repeatedly disobeyed staff directives during the incident. Throughout the
8 incident, not only was the PLAINTIFF reacting in a state of severe distress after
9 having been attacked, but that the other individual was attempting to regain his
10 footing after having been knocked down. These key details were either ignored by
11 DEFENDANTS, and/or disregarded for not comporting with the narrative they had arrived
12 at. This miscarriage of justice has maintained PLAINTIFF'S state of emotional
13 distress since the hearing on 05/21/2021, and the erroneous sanction being imposed.

14 80. DEFENDANTS have acted wilfully, intentionally, with malice, and in dispicable
15 and conscious disregard for the rights of the PLAINTIFF, within the meaning of
16 Cal.Civ.Code §3294, and have thereby entitled PLAINTIFF to an award of exemplary
17 and/or punitive damages.

18
19 • REQUEST FOR RELIEF •

20 WHEREFORE, PLAINTIFF prays that the court:

21 1) Declare the DEFENDANTS' policies and practices described throughout this
22 complaint, have violated PLAINTIFF'S rights under the 14th Amendment of the U.S.
23 Constitution, Article I, §7 of the California Constitution, California Civil Code
24 §52.1, and constitute the torts of abuse of process, conspiracy, negligence, and
intentional infliction of emotional distress under California state law.

25 2) Issue a mandate/directive to CDCR, to implement Due Process procedural
26 safeguards in the form of a witness request/denial form being required any time any
27 accused individual is issued an RVR 115(serious) write up that has the inherent
28 potential to adversely affect the liberty interests of the accused, thereby requiring
due process protections.

3) Nominal damages for the violations of the PLAINTIFF'S rights.

4) Compensatory damages in an amount to be proven at trial.

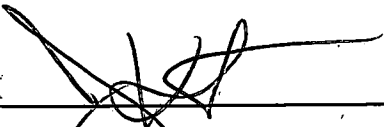
5) Punitive/Exemplary damages against each DEFENDANT in an amount to be proven at trial.

6) Costs, including filing fees, copying charges, mailing costs, and those costs and expenses authorized under 42 U.S.C. §1988; Cal.Civ.Code §52.1, and Cal. Code of Civil Procedure §1021.5.

7) Any other relief this court deems just and equitable.

Respectfully Submitted,

X


Jonathon J. Kohut,
Plaintiff,
In Pro Se.

Dated: 8/27/2023

J.J. Kohut #AN1162
ASP/410-18-5L
P.O. Box 904
Avenal, Ca. 93204-0904

-EXHIBIT #1-

- 7219 Medical Evaluation/Injury Report-Kohut # 1.1
- 7219 Medical Evaluation/Injury Report-Mills # 1.2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

JONATHON KOHUT

Case No. 1:22-cv-00472-HBK(PC)

vs.

M. MARTIN, et al.

**VOLUME OF EXHIBITS/DECLARATION
IN SUPPORT THEREOF**(Rule 10(c), Fed.R.Civ.P.)

• Volume of Exhibits/Declarations In Support Thereof •

<u>Document Description</u>	<u>Exhibit #</u>
• CDCR 7219 Medical Evaluation Forms(2 pgs)	1.1-2
• RVR log no.7083306(4 pgs)	2.1.1-4
• Incident Report Narratives(3 pgs)	2.2.1-3
• Hearing Results(9 pgs)	2.3.1-9
• 602 log no.114099(6 pgs)	3.1.1-6
• 602 log no.123815(8 pgs)	3.2.1-8
• Government Claim No.21005089(2 pgs)	4.1-2
• Letter to CDCR OIA(Internal Affairs)(4 pgs)	5.1.1-4
• Response Letter/AW & CDO M. Martin(1 pg)	5.2.1
• Response Letter/CDCR Ombudsman(1 pg)	6.1
• Declaration of Plaintiff(11 pgs)	Appendix A

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS AND REHABILITATION

**MEDICAL REPORT OF INJURY
OR UNUSUAL OCCURRENCE**
CDCR 7219 (Rev. 01/18)

Page 1 of

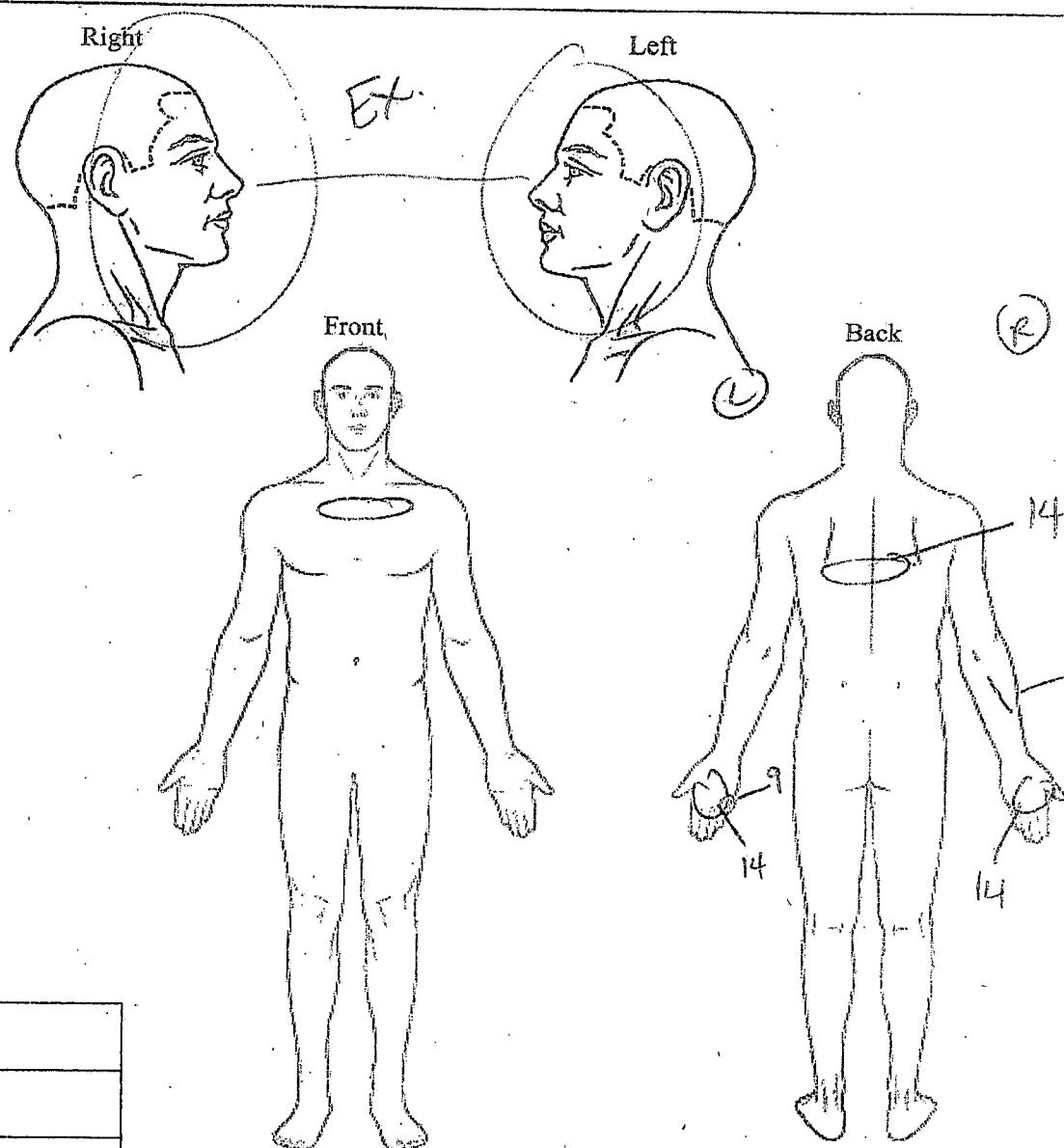
NAME OF INSTITUTION PCSP		LOCATION OF EVALUATION Delta Gym		DATE 04-28-21	
REASON FOR REPORT <input type="checkbox"/> ALLEGATION <input type="checkbox"/> ON THE JOB INJURY <input type="checkbox"/> USE OF FORCE <input type="checkbox"/> INJURY <input type="checkbox"/> OTM RETURNS <input checked="" type="checkbox"/> UNUSUAL OCCURRENCE <input type="checkbox"/> PRE AD/SEG ADMISSION <input type="checkbox"/> R&R <input type="checkbox"/> OTHER					
NAME LAST Kohut FIRST Jonathan		CDCR NUMBER AN1162	PERNR / INST. ID #	VISITOR ID # (SOMS)	
PLACE OF OCCURRENCE Delta 1	DATE OF OCCURRENCE 04-28-21	TIME OF OCCURRENCE @ 2046	TIME SEEN @ 2050	RN NOTIFIED TIME	PHYSICIAN NOTIFIED TIME

BRIEF STATEMENT IN SUBJECT'S WORDS OF THE CIRCUMSTANCES OF THE INJURY OR UNUSUAL OCCURRENCE

" No comment "

INJURIES FOUND?	YES / NO
Abrasion/Scratch	1
Active Bleeding	2
Broken Bone	3
Bruise/Discolored Area	4
Burn	5
Dislocation	6
Dried Blood	7
Fresh Tattoo	8
Cut/Laceration/Slash	9
Swollen Area	10
Pain	11
Protrusion	12
Puncture	13
Reddened Area	14
Skin Flap	15
Pre-Existing	16
Other	17
	18
Chemical Agent Exposure?	YES / NO
Chem. Agent Exposure Area	EX
Decontaminated w/ Water?	YES / NO / REFUSED
Decontaminated w/ Air?	YES / NO / REFUSED
Self-decontamination Instructions given?	YES / NO
Staff issued Exposure packet?	YES / NO

Initial	1 st Check
2 nd Check	Final
TIME/DISPOSITION RIC @ 2103	



REPORT COMPLETED BY/TITLE (PRINT AND SIGN) M. Sandoval WND	PERNR / INST. ID # 82149/19611529	RDOs SLS	ASSIGNMENT AREA 2W Floor
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STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS AND REHABILITATION

**MEDICAL REPORT OF INJURY
OR UNUSUAL OCCURRENCE**

CDCR 7219 (Rev. 01/18)

Page 1 of

NAME OF INSTITUTION DOSP		LOCATION OF EVALUATION Delta Program		DATE 4-28-21	
REASON FOR REPORT <input type="checkbox"/> ALLEGATION <input type="checkbox"/> ON THE JOB INJURY <input type="checkbox"/> USE OF FORCE <input type="checkbox"/> INJURY <input type="checkbox"/> OTM RETURNS <input checked="" type="checkbox"/> UNUSUAL OCCURRENCE <input type="checkbox"/> PRE AD/SEG ADMISSION <input type="checkbox"/> R&R <input type="checkbox"/> OTHER					
NAME LAST Mills FIRST J		CDCR NUMBER 8H8082		VISITOR ID # (SOMS) Ma	
PLACE OF OCCURRENCE Delta 1		DATE OF OCCURRENCE 4-28-21		TIME OF OCCURRENCE 2046	
		TIME SEEN 2055		RN NOTIFIED TIME Ma	
				PHYSICIAN NOTIFIED TIME Ma	
BRIEF STATEMENT IN SUBJECT'S WORDS OF THE CIRCUMSTANCES OF THE INJURY OR UNUSUAL OCCURRENCE					

"NO comment"

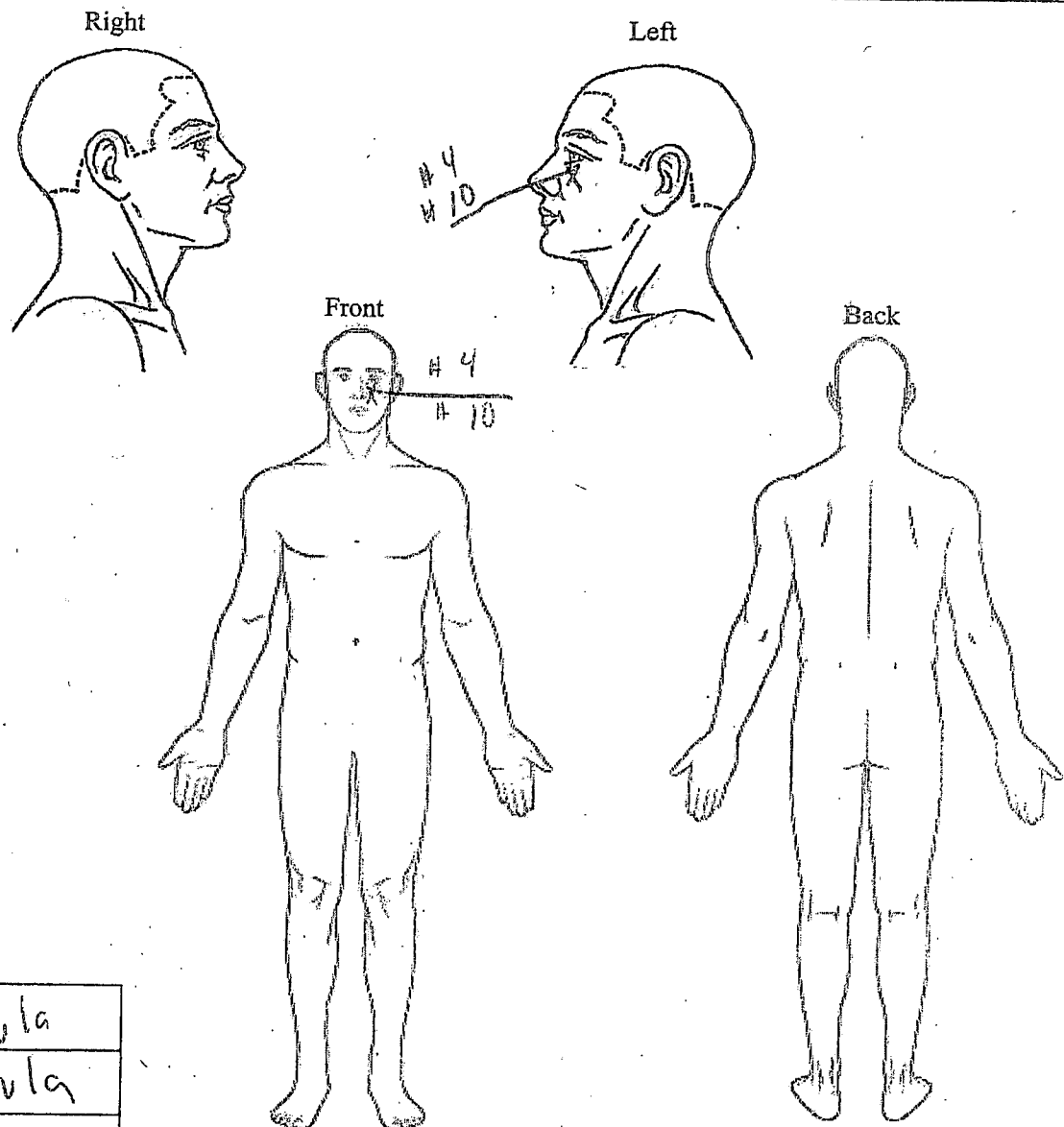
INJURIES FOUND?	YES / NO
Abrasion/Scratch	1
Active Bleeding	2
Broken Bone	3
Bruiise/Discolored Area	4
Burn	5
Dislocation	6
Dried Blood	7
Fresh Tattoo	8
Cut/Laceration/Slash	9
Swollen Area	10
Pain	11
Protrusion	12
Puncture	13
Reddened Area	14
Skin Flap	15
Pre-Existing	16
Other	17
	18

Chemical Agent Exposure?	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
Chem. Agent Exposure Area	EX
Decontaminated w/ Water?	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> REFUSED
Decontaminated w/ Air?	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> REFUSED
Self-decontamination Instructions given?	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
Staff issued Exposure packet?	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>

Initial	1 st Check
Ma	Ma
2 nd Check	Final
Ma	Ma

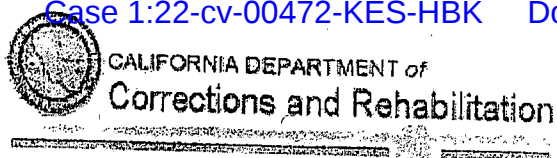
TIME/DISPOSITION
returned to custody

REPORT COMPLETED BY/TITLE (PRINT AND SIGN) M Sharp CN	PERNR / INST. ID # 80522	RDOs S/SW	ASSIGNMENT AREA Medical
	19614237		



-EXHIBIT #2-

- Rules Violation Report Log No.#7083306 2.1.1-4
- Incident Report Narratives 2.2.1-3
- Hearing Results 2.3.1-9



RULES VIOLATION REPORT

CDC NUMBER AN1162	INMATE'S NAME KOHUT, JONATHAN J.	MEPD 04/28/2041	FACILITY PVSP-Facility D	HOUSING LOCATION PVSP-D - D 001 2 - 226001U
VIOLATION DATE 04/28/2021	VIOLATION TIME 20:46:00	VIOLATION LOCATION PVSP-Facility D - DAYROOM		WITH STG NEXUS No

Did the reporting employee ensure the inmate understands (to the best of his/her ability) the consequences of the continued misconduct? N/A

Did the reporting employee take into consideration the severity of the inmate's disability and the need for adaptive support services when determining the method of discipline? N/A

CIRCUMSTANCES OF VIOLATION

On Wednesday April 28, 2021, at approximately 2046 hours, while performing my duties as Delta Facility Building One Floor Officer #1, I was monitoring the evening dayroom activities when I observed two (2) inmates later identified by their state issued Identification Cards (I.D.) cards as Mills, BH 8082 (DFB1-134L) and Kohut, AN 1162 (DFB1-226U) striking each other in the upper torso and facial area with their fists in front of the stairs in C-section of the dayroom. Delta Facility Building 1 Floor Officer #2, R. Blancas activated his Personal Alarm Device (P.A.D.) and notified Central Control of a Code 1 in building 1. Control Booth Officer M. Reyes ordered all inmates to "Get Down" over the Public Address System (P.A.S.). All inmates complied with the orders to "get down" with the exception of the combatants. Mills and Kohut continued to strike each other in the upper torso and facial area with their fists. Officer Blancas and I formed a skirmish line in front of the Officers Podium facing A Section of the dayroom and gave additional orders to "Get Down" with negative results. Mills and Kohut continued to strike each other in the upper torso and facial area with their fists. I observed Mills lose his balance and fall to ground, landing on his back. Mills covered his upper torso area with his arms and hands attempting to defend himself. I gave additional orders to "Get Down" with negative results, I observed Kohut lean forward in an attempt to strike Mills while he lay on the ground. Fearing Serious Bodily Injury or Great Bodily Injury Mills would suffer from Kohut's attack, I utilized my State Issued MK-9 Oleoresin Capsicum (O.C.) spray, administering one (1) 2 second burst from approximately 6 feet away striking the facial area of Kohut. The use of force had the desired effect, gaining compliance, Kohut ceased his attack, separated and assumed a prone position away from Mills. Responding staff arrived and joined the already established skirmish line and placed the combatants into handcuffs and performed clothed body searches with negative results for contraband. Both inmates were then escorted out of the building for Medical Evaluations. This concludes my involvement in this incident.

PERN: 92082

REPORTING EMPLOYEE S. Wiswell	TITLE C/O	ASSIGNMENT DFB1 Floor #1	RDO S/M	DATE: 04/29/2021
----------------------------------	--------------	-----------------------------	------------	---------------------

RVR LOG NUMBER: 000000007083306

VIOLATED RULE NUMBER: 3005(d)(1)

SPECIFIC ACT: Fighting

CLASSIFICATION

LEVEL: Serious	OFFENSE DIVISION: Division D
REFERRED TO: Senior Hearing Officer	FELONY PROSECUTION LIKELY: No

REVIEWING SUPERVISOR F. Nevarez	TITLE SGT (A)	DATE 04/29/2021
------------------------------------	------------------	--------------------

CLASSIFIED BY E. Sanders	TITLE CAPTAIN (A)	DATE 04/30/2021
-----------------------------	----------------------	--------------------

CDCR SOMS ISST120 - RULES VIOLATION REPORT



CALIFORNIA DEPARTMENT of
Corrections and Rehabilitation

RULES VIOLATION REPORT

CDC NUMBER AN1162	INMATE'S NAME KOHUT, JONATHAN J.	MEPD 04/28/2041	FACILITY PVSP-Facility D	HOUSING LOCATION PVSP-D - D 001 2 - 226001U
VIOLATION DATE 04/28/2021	VIOLATION TIME 20:46:00	VIOLATION LOCATION PVSP-Facility D - DAYROOM		

INMATE NOTIFICATION			
POSTPONEMENT OF DISCIPLINARY HEARING			
<input type="checkbox"/> I DO NOT REQUEST my hearing be postponed pending outcome of referral for prosecution.	INMATE SIGNATURE <i>N/A</i>	DATE <i>4/30/21</i>	
<input type="checkbox"/> I REQUEST my hearing be postponed pending outcome of referral for prosecution.	INMATE SIGNATURE <i>N/A</i>	DATE <i>4/30/21</i>	
<input type="checkbox"/> I REVOKE my request for postponement.	INMATE SIGNATURE <i>N/A</i>	DATE <i>4/30/21</i>	
STAFF ASSISTANT			
<input type="checkbox"/> REQUESTED <input type="checkbox"/> WAIVED BY INMATE	INMATE SIGNATURE <i>N/A</i>	DATE <i>4/30/21</i>	
INVESTIGATIVE EMPLOYEE			
<input type="checkbox"/> REQUESTED <input type="checkbox"/> WAIVED BY INMATE	INMATE SIGNATURE <i>N/A</i>	DATE <i>4/30/21</i>	

SUMMARY OF DISCIPLINARY PROCEDURES AND INMATE RIGHTS

See California Code of Regulations, Title 15 (CCR) for details

A. TIME CONSTRAINTS -

1. A classified copy of the Rules Violation Report and any additional/supplemental information containing any elements of the violation charged shall normally be provided to the inmate within 15 days from the date the information leading to the charges is discovered by staff.
2. The charges shall be heard within 30 days from the date the inmate is provided a classified copy of the Rules Violation Report unless the charges were referred for possible prosecution and the inmate has been granted a request for postponement of the disciplinary proceedings pending the outcome of the referral, if exceptional circumstances exist pursuant to CCR Section 3000, or the inmate is transferred out of the custody of the department. Postponement shall not bar any credit forfeiture.
3. **REFERRAL FOR PROSECUTION - (Serious Rules Violations Only)** - Referrals for prosecution will not delay a disciplinary hearing unless you submit a request in writing for postponement of the hearing pending the outcome of such referral. You may revoke such request in writing at any time prior to the filing of accusatory pleadings by the prosecuting authority. A disciplinary hearing will be held within 30 days of staff receiving your written revocation of your request to postpone the hearing or within 30 days of receiving a response from the prosecuting authority. (CCR Section 3316-3320)
4. Failure to meet the time constraints outlined in CCR Section 3320 shall preclude forfeiture of credits.

B. INVESTIGATIVE EMPLOYEE/STAFF ASSISTANCE -

1. General Information - You may request to have an Investigative Employee to assist in the investigation and/or a Staff Assistant assigned, to assist in the preparation, or presentation of your defense at the disciplinary hearing. Staff shall evaluate your request along with the criteria outlined in CCR Section 3315 (d)(1) and CCR Section 3315(d)(2) and determine if an Investigative Employee and/or Staff Assistant shall be assigned.
2. Staff Assistant - If assigned, the Staff Assistant will inform inmates of their rights and of the disciplinary hearing procedures, advise and assist in the inmate's preparation for a disciplinary hearing, represent the inmate's position at the hearing, ensure that the inmate's position is understood, and that the inmate understands the decisions reached. (CCR Section 3318)
3. Investigative Employee - **(Serious Rules Violations Only)** - If assigned, will gather information, question staff and inmates, screen witnesses, and complete and submit a written, non-confidential report to the disciplinary hearing officer. You have the right to receive a copy of the investigative employee's report 24 hours before a hearing is held. (CCR Section 3318)
4. Witnesses - **(Serious Rules Violations Only)** - You may request the presence of witnesses at the hearing who can present facts related to the charges against you. You may also request the presence of the reporting employee and the investigative employee. You may, under the direction of the hearing officer, questions any witness present at the hearing. The hearing officer may deny the presence of witnesses when specific reasons exist. (CCR Section 3315)
5. Personal Appearance - A hearing of the charges will not normally be held without your presence, unless you refuse to attend. (CCR Section 3320)

C. DISPOSITION - At the end of the hearing, you will be advised of the findings and disposition of the charge. Within five working days, following review of the Rules Violation Report by the Chief Disciplinary Officer, you will be given a copy of the completed rule violation report, which will contain a statement of the findings and disposition and the evidence relied upon to support the conclusions reached. (CCR Section 3320)**D. APPEAL** - If you are dissatisfied with the process, findings or disposition, you may submit an inmate appeal within 30 days following receipt of the finalized copy of the Rules Violation Report and any other pertinent documentation (CCR Section 3084)

CDCR INCIDENT REPORT PACKAGE

PAGE: 18

REPORT NO. ITR161 - 12

INCIDENT LOG NUMBER: 00000000021670

PROCESSED: 05/07/2021 15:03

REQUESTOR: E. Sanders

STAFF NARRATIVE

STAFF NAME: Wiswell, S. [REDACTED]
CREATED DATE: 04/28/2021NARRATIVE TYPE: Initial Report
CREATED TIME: 23:18:06

NARRATIVE

On Wednesday April 28, 2021, at approximately 2046 hours, while performing my duties as Delta Facility Building One Floor Officer #1, I was monitoring the evening dayroom activities when I observed two (2) inmates later identified by their state Issued Identification Cards (I.D.) cards as Mills, BH 8082 (DFB1-134L) and Kohut, AN1162 (DFB1-226U) striking each other in the upper torso and facial area with their fists in front of the stairs in C-section of the dayroom. Delta Facility Building 1 Floor Officer #2, R. Blancas activated his Personal Alarm Device (P.A.D.) and notified Central Control of a Code 1 in building 1. Control Booth Officer M. Reyes ordered all inmates to "Get Down" over the Public Address System (P.A.S.). All inmates complied with the orders to "get down" with the exception of the combatants. Mills and Kohut continued to strike each other in the upper torso and facial area with their fists. Officer Blancas and I formed a skirmish line in front of the Officers Podium facing A Section of the dayroom and gave additional orders to "Get Down" with negative results. Mills and Kohut continued to strike each other in the upper torso and facial area with their fists, I observed Mills lose his balance and fall to ground, landing on his back. Mills covered his upper torso area with his arms and hands attempting to defend himself. I gave additional orders to "Get Down" with negative results, I observed Kohut lean forward in an attempt to strike Mills while he lay on the ground. Fearing Serious Bodily Injury or Great Bodily Injury Mills would suffer from Kohut's attack, I utilized my State Issued MK-9 Oleoresin Capsicum (O.C.) spray, administering one (1) 2 second burst from approximately 6 feet away striking the facial area of Kohut. The use of force had the desired effect, gaining compliance, Kohut ceased his attack, separated and assumed a prone position away from Mills. Responding staff arrived and joined the already established skirmish line and placed the combatants into handcuffs and performed clothed body searches with negative results for contraband. Both inmates were then escorted out of the building for Medical Evaluations. This concludes my involvement in this incident.

S. Wiswell

DATE: 04/28/2021

STAFF SIGNATURE

BADGE #: 84773

PERNR: [REDACTED]

NARRATIVE REVIEWED: Yes

REVIEWED BY STAFF: Nevarez, F. [REDACTED]

REVIEWED DATE: 04/28/2021

REVIEWED TIME: 23:21:55

STAFF NAME: Wiswell, S. [REDACTED]
CREATED DATE: 04/29/2021NARRATIVE TYPE: Supplemental Report
CREATED TIME: 16:59:06

NARRATIVE

Question #1:

In your report you indicate you utilized OC Pepper Spray on inmate Kohut in the Dayroom. Can you explain if and how the Dayroom was decontaminated?

A1. Yes the dayroom was decontaminated with soap and water.

S. Wiswell

DATE: 04/29/2021

STAFF SIGNATURE

BADGE #: 84773

PERNR: [REDACTED]

NARRATIVE REVIEWED: Yes

REVIEWED BY STAFF: Nevarez, F. [REDACTED]

REVIEWED DATE: 04/29/2021

REVIEWED TIME: 17:19:20

CDCR

INCIDENT REPORT PACKAGE

PAGE: 22

REPORT NO. ITR161 - 12

INCIDENT LOG NUMBER: 000000000021670

PROCESSED: 05/07/2021 15:03

REQUESTOR: E. Sanders

STAFF NARRATIVE

STAFF NAME: Blancas, R. [REDACTED]
CREATED DATE: 04/28/2021**NARRATIVE TYPE:** Initial Report
CREATED TIME: 23:36:43

NARRATIVE

On Wednesday, April 28, 2021, at approximately 2046 hours, while assigned as Facility D Building One Floor Officer #2, I monitored the evening dayroom program from the Officer's Podium where I observed inmates KOHUT, AN-1162, (DFB1-226U) and MILLS, BH-8082, (DFB1-134L) striking each other with their fists, aiming for the upper-torso and facial areas. The fight began in C-section of the dayroom, nearest the stairs, adjacent the Officer's Podium. Kohut and Mills continued to strike each other with their fists while traveling to the center of the dayroom, leading to the front of the Officer's Podium. I verbally order both inmates to "Get down" with negative results; both Kohut and Mills continued striking each other with their fists to the upper-torso areas. I notified Central Control via institutional radio and activated my Personal Alarm Device to initiate a code-one response. Control Booth Officer; M. Reyes ordered all inmate(s) on the dayroom to "Get down" via Public Address System (P.A). All inmates complied with the exception of Kohut and Mills who continued to strike each other with their first to the upper-torso area. Facility D Building One Floor Officer #1; S. Wiswell and I began forming a skirmish line approximately six to eight feet from the combatants, facing the direction of A-Section dayroom. Officer Wiswell and I gave additionally verbal orders to Kohut and Mills to "Get down" again with negative results, both Kohut and Mills continued to strike each other with their fists to the facial areas, subsequently Mill fell to the ground laying on his back. From the Skirmish line I observed Officer Wiswell deploy one (1) burst from his department issued Oleoresin Capsicum (OC) Pepper Spray at an approximate distance of six (6) feet, in the direction of Kohut's facial area. I observed the chemical agent (OC) Pepper Spray strike Kohut's upper-torso and facial area(s), Mills and Kohut separated and assumed prone positions on the ground without further incident. Responding staff arrived and joined the formed skirmish line. Facility D Security Patrol Officer #4; D. Ortiz and I formed a contact/cover team. Officer Ortiz provided coverage while I secured Mills in handcuffs and performed a clothed-body search with negative results for any contraband. Officer Ortiz provided coverage while I escorted Mills to Facility D Program Office. Officer Ortiz searched the inner and outer area of Holding Cell #1; with negative results for any contraband. I secured Mills into Holding Cell #1 and performed an unclothed-body search with negative results for any contraband. This concludes my involvement in this incident.

R. Blancas

STAFF SIGNATURE

DATE: 04/28/2021**BADGE #:** 84558**PERNR:** [REDACTED]**NARRATIVE REVIEWED:** Yes**REVIEWED BY STAFF:** Nevarez, P. [REDACTED]**REVIEWED DATE:** 04/28/2021**REVIEWED TIME:** 23:37:27

CDCR

INCIDENT REPORT PACKAGE

PAGE: 24

REPORT NO. ITR161 - 12

INCIDENT LOG NUMBER: 00000000021670

PROCESSED: 05/07/2021 15:03

REQUESTOR: E. Sanders

STAFF NARRATIVE

STAFF NAME: Reyes, M [REDACTED]
CREATED DATE: 04/28/2021**NARRATIVE TYPE:** Initial Report
CREATED TIME: 23:14:06

NARRATIVE

On Wednesday, April 28, 2021 at approximately 2046 hours, as Facility D Building One Control Booth Officer, I was monitoring the evening dayroom program when I observed in C-section of the dayroom nearest to the stairwells, inmates MILLS, BH8082, (DFB1-134L) and KOHUT, AN1162, (DFB1-226U) engaging in a fight. Both inmates were striking each other with their fists to the upper-torso and facial areas. Utilizing the Public Address (PA) System, I ordered all inmates in the dayroom to "Get down" to which all inmates complied with the exception of Mills and Kohut who continued fighting. Facility D Building One Floor Officer #2; R. Blancas notified Central Control via institutional radio to initiate a code-one response and activated his Personal Alarm Device. Officer Blancas and Facility D Building One Floor Officer #1; S. Wiswell formed a skirmish line in front of the Officer's Podium, facing in the direction of A-Section dayroom. Officer Blancas and Wiswell gave additional verbal orders to "Get down"; with negative results, both Kohut and Mills continued to strike each other with their fists, subsequently Kohut knocked Mills to the ground. I observed Officer Wiswell deploy one (1) burst of his department issued Oleoresin Capsicum (OC) Pepper Spray in the direction of the Kohut's upper-torso area. Due to my elevated post, I cannot positively determine the distance and where the chemical agent landed, nor if any other person(s) were exposed. Kohut and Mills separated and assumed a prone position on the ground. Responding staff arrived, I continued to monitor all inmate(s) in the dayroom while responding staff escorted Kohut and Mills out of the building. I conducted a recall of all non-involved inmates in the dayroom and secured all inmates in their assigned housing. This concludes my involvement in this incident.

M. Reyes

DATE: 04/28/2021

STAFF SIGNATURE

BADGE #: 89460**PERNR:** [REDACTED]**NARRATIVE REVIEWED:** Yes**REVIEWED BY STAFF:** Nevarez, F [REDACTED]**REVIEWED DATE:** 04/28/2021**REVIEWED TIME:** 23:16:37**STAFF NAME:** Reyes, M [REDACTED]
CREATED DATE: 04/30/2021**NARRATIVE TYPE:** Supplemental Report
CREATED TIME: 17:42:58

NARRATIVE

Question #1:

In your report you indicate there were other inmates in the dayroom, were there any uninvolved inmates near the incident location that may have been unintentionally exposed to chemical agents? If so, were they offered decontamination?

Answer #1:

No, there were no non involved inmates near the incident location.

M. Reyes

DATE: 04/30/2021

STAFF SIGNATURE

BADGE #: 89460**PERNR:** [REDACTED]**NARRATIVE REVIEWED:** Yes**REVIEWED BY STAFF:** Wilson, M [REDACTED]**REVIEWED DATE:** 04/30/2021**REVIEWED TIME:** 18:11:56

CALIFORNIA DEPARTMENT of
Corrections and Rehabilitation**DISCIPLINARY HEARING RESULTS**

Institution Name: Pleasant Valley State Prison	Facility: PVSP-Facility D	Log Number: 000000007083306
Inmate Name: KOHUT, JONATHAN J.	CDC #: AN1162	Bed Number: PVSP-D -D 001 2 - 226001U
TABE Score: 12.9	MH LOC: CCCMS	DDP Status: NCF

DUE PROCESS

Rule Violation #: 3005(d)(1)	Specific Act: Fighting
Level: Serious	Offense Division: Division D
Offense Occurrence: <u>1st Occurrence</u>	
Violation Date: 04/28/2021	Violation Time: 20:46:00
Hearing Date: 05/21/2021	Hearing Time: 15:50:00
Did a laboratory confirm the evidence tested positive for Controlled substances?: <u>N/A</u>	

Actions Taken				
Date	Time	Type/Reason	Staff	Elapsed Days
04/29/2021	18:44:55	RVR Ready for Review by Supv.	S. Wiswell	1
04/29/2021	18:55:14	RVR Approved by Supervisor	F. Nevarez	1
04/30/2021	12:26:59	RVR Classified	E. Sanders	2
04/30/2021	15:20:57	Notice of Pending Charges Sent to Rcds.	M. Chamness	2
04/30/2021	15:55:26	Inmate Copy Served Initial Rules Violation Report	M. Chamness	2
04/30/2021	15:56:27	Inmate Copy Served Medical Evaluation Report	M. Chamness	2
04/30/2021	15:57:09	Inmate Copy Served Other	M. Chamness	2
05/07/2021	18:27:17	Inmate Copy Served Incident Report	M. Chamness	9

All Time Constraints Met?: Yes

SHO/HO DDP Certified?: N/A**Due Process Additional Information:**

HEARING

- ☒ Subject elected not to participate in the adjudication process by refusing to attend the hearing. An Informational Chrono was generated documenting the refusal to attend the hearing.
- ☒ Subject was Present, in good health and ready to proceed.

Hearing Additional Information**DISABILITY**

- ☒ Hearing ☒ Vision ☒ Mobility ☒ Learning ☒ Developmental/Cognitive
- ☒ Other ☒ None

Requires Accommodation? ☐ No**DDP Specific Information**128-C2 Reviewed? ☐ YesCurrent DDP Status Date:
04/06/2000Did the Reporting Employee document the use of Adaptation Support(s)? ☐ N/A

Adaptive Support	Contribute	How	
<input type="text"/>		<input type="text"/>	

Victimization	Contribute	How	
<input type="text"/>		<input type="text"/>	

Disability Additional Information:**MENTAL HEALTH ASSESSMENT**

Mental Health Assessment Requested: No

Reason for Mental Health Assessment Request:

Clinical Staff Recommended Staff Assistance Assignment:

Clinical Staff determined Mental Health Symptoms strongly influenced behavior and recommended alternate documentation:

Clinical Staff determined Developmental Disability strongly influenced behavior and recommended alternate documentation:

Clinical Staff determined Mental Health Symptoms contributed to behavior:

Clinical Staff determined Developmental Disability contributed to behavior:

Clinical Staff provided information when assessing the penalties:

STAFF ASSISTANT

Staff Assistant Assigned: No

Reason for assignment of Staff Assistant:

SA Name	Date Assigned	Certified?	Meet 24 hours prior to hearing?	Present?	

Staff Assistant Additional Information:

INVESTIGATIVE EMPLOYEE

Investigative Employee Assigned: No

Reason for assignment of Investigative Employee:

Investigative Employee Additional Information:

CONFIDENTIAL INFORMATIONConfidential Information Used: ☐ No

Confidential Document Number	Author of Confidential Document	Date of Confidential Document	Reviewed by SHO/HO	Deemed Confidential	Reason(s) Information was Deemed Confidential
					<input type="checkbox"/> Information which, if known to inmates, would endanger the safety of person(s). <input type="checkbox"/> Information which, if known to inmates, would jeopardize the security of the institution. <input type="checkbox"/> Specific medical or Psychological information which, if known to inmates, would be medically or psychologically detrimental to the inmate. <input type="checkbox"/> Information provided and classified confidential by another governmental agency. <input type="checkbox"/> A Security Threat Group debrief report, reviewed and approved by the debriefing subject, for placement in the confidential section of the central file.

Confidential Document	Confidential Source	Confidential Disclosure	Sufficient Information	Reason(s) Deemed Reliable

Number	Number	Form Issued	Disclosed	
				<input type="checkbox"/> The confidential source has previously provided information which has proved to be true. <input type="checkbox"/> Other confidential sources have independently provided the same information. <input type="checkbox"/> The information provided by the confidential source is self-incriminating. <input type="checkbox"/> Part of the information provided by the confidential source is corroborated through investigation or by information provided by non-confidential sources. <input type="checkbox"/> The confidential source is the victim. <input type="checkbox"/> This source successfully completed a polygraph examination.
Confidential Additional Information: <div style="border: 1px solid black; height: 20px; width: 100%;"></div>				

WITNESSES

Witnesses requested at Hearing

☐ Reporting Employee ☐ Staff Assistant ☐ Investigative Employee
☐ Other ☐ Inmate ☒ None

Non-Inmate Witness(es)			
Name	Rank	Type	Granted?
Questions Asked			

Inmate Witness(es)			
CDC#	Name	Bed	Granted?
Questions Asked			

Witness Additional Information:

PLEA AND STATEMENT

PLEA/STATEMENT: The above circumstances were read aloud to subject and elected to plea: Not Guilty

☐ Subject declined to make a statement
☒ Subject made a statement

Comments:

Staff have this all wrong, the reports state we were swinging at each other striking in the face and upper torso area is not true, he was swinging at me. the 7219's don't reflect injuries or marks to support the reports. He was trying to fight me and I told him I wouldn't fight him. He came at me swinging on me. I kept backing away from him trying to avoid fighting. he swung at me and grazed my lip, so I punched him one time and knocked him down. I thought he going to get up so I advanced toward him again. Them staff sprayed us.

FINDINGS

Subject was found: **Guilty as Charged** based on a preponderance of evidence.

Lesser Included Charge:

Level:

Offense Division:

Offense Occurrence:

Comments:

SHO reviewed and weighed all available evidence and concludes a guilty finding is substantiated. The subject is not arguing the fact he punched Mills in the face one time and knocked him down and thought he was going to get up so he advanced toward him again, his entire defense is simply stating he was the victim and was only defending himself. The SHO notes at the time the subject punched Mills knocking him to the ground, he became the aggressor of the incident. SHO finds subject guilty in good cause, the preponderance of evidence supported the charge.

MENTAL HEALTH ASSESSMENT CONSIDERATION

(Documentation of opinions to be used for consideration by the hearing official and the reasoning shall be documented in this section.)

Comments:**EVIDENCE**

The following evidence was used to support the findings:

AVSS Available: ☐ No

AVSS Impact: -

Comments:

1. The R. E. written report submitted stating in part "Mills and Kohut continued to strike each other in the upper torso and facial area with their fists, I observed Mills loose his balance and fall to ground, landing on his back. Mills covered his upper torso area with his arms and hands attempting to defend himself. I gave additional orders to "Get Down" with negative results, I observed Kohut lean forward in an attempt to strike Mills while he lay on the ground."
2. CDCR 7219, Medical Report of Injury of both subjects documenting injuries and the use of chemical agents consistent with being in a physical altercation.
3. Subjects partial admission of guilt at the time of the hearing.

DISPOSITION

Sanction Type	Quantity	Mitigated	Interest of Justice	DDP	MH LOC	MH-A	Start Date	End Date
Credit Loss	90 Days	<input type="checkbox"/> No	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

Confined to Quarters Days			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Confined to Quarters Weekends			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Disciplinary Detention			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Privilege Group C			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Loss of Pay								
Canteen Privileges			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Phone Privileges			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Extra Duty			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Yard Recreation Privileges			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Day Room Privileges			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Packages Privileges			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Property Restrictions			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Visiting Privileges			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Contact Visiting Privileges			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Contact Visiting (Permanent Loss)								
Loss of Family Visits			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Permanent Loss of Family Visits								
Trust Account Hold								
Mandatory Drug Testing								
IEX Control Suit								

Counseled Regarding Misconduct: without reprimand

☒ Impose Suspended Sanctions☐ Reinstate Suspended Sanctions**Sanction Mitigation Additional Information:**

reasoning used to arrive at their decision.)

Comments:

Referred to Classification Committee N/A

For ☒ SHU Term Assessment ☒ Program Review ☒ Un-Assignment ☒ Substance Abuse Treatment

Disposition Additional Information:

ENEMY CONCERNS

- ☒ Not Applicable
- ☒ Subject states he/she does not have Enemy or Safety Concerns.
- ☒ One or more of the inmates involved has stated there is lingering animosity towards one another. Therefore, the SHO has entered non-confidential separation alerts for the following inmates:
- ☒ Based on the totality of circumstances and/or information garnered by staff, the Hearing Official has determined an enemy situation exists and ensured the below non-confidential separation alerts were entered:

SECURITY THREAT GROUP

Security Threat Group Nexus? ☒ No

Security Threat Group Nexus Additional Information:

FINAL SECTION

Contraband Type	Disposition	Disposition Comments	

Additional Information:

Both inmates signed compatibility chronos stating they do not consider each other enemies as documented in the Related Standard Forms section.

CREDIT RESTORATION

- ☒ Subject was advised of his/her right to restoration of credits under CCR 3327, 3328, and 3329.
- ☒ Subject was advised Credit Forfeiture for a Division 'A', 'B' or 'C' offense will not be restored.
- ☒ At the conclusion of the hearing Subject was advised of the findings, disposition, and his/her right to appeal per CCR 3084.1.

Hearing Official

D. May

TITLE:
LT.DATE:
05/26/2021**FINDINGS (BY CDO)**Subject was found: **Guilty as Charged** based on a preponderance of evidence.

Lesser Included Charge:

Level:

Offense Division:

Offense Occurrence:

CDO Summary: **Affirming The Hearing Results****Comments:****DISPOSITION (BY CDO)**

Sanction Type	Quantity	Mitigated	Interest of Justice	DDP	MH LOC	MH-A	Start Date	End Date
Credit Loss	90 Days	<input type="checkbox"/> No	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Confined to Quarters Days			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Confined to Quarters Weekends			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Disciplinary Detention			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Privilege Group C			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Loss of Pay								
Canteen Privileges			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Phone Privileges			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Extra Duty			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Yard Recreation Privileges			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Day Room Privileges			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Packages Privileges			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Property Restrictions			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Visiting Privileges			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

Contact Visiting Privileges			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Contact Visiting (Permanent Loss)								
Loss of Family Visits			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Permanent Loss of Family Visits								
Trust Account Hold								
Mandatory Drug Testing								
IEX Control Suit								

☒ Impose Suspended Sanctions☒ Reinstate Suspended Sanctions**Comments:**

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Chief Disciplinary Officer**Comments:**

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M. Martin

TITLE:
AWDATE:
05/27/2021

CDCR SOMS ISST126 - DISCIPLINARY HEARING RESULTS

-EXHIBIT #3-

- 602 Log No.#114099 3.1.1-6
- 602 Log No.#123815 3.2.1-8

STATE OF CALIFORNIA
INMATE/PAROLEE APPEAL
CDCR 602 (Rev. 03/12)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Side 1

IAB USE ONLY	Institution/Parole Region	Log #	Category
		114099	
FOR STAFF USE ONLY			

You may appeal any California Department of Corrections and Rehabilitation (CDCR) decision, action, condition, policy or regulation that has a material adverse effect upon your welfare and for which there is no other prescribed method of departmental review/remedy available. See California Code of Regulations (CCR), Title 15, Section 3084.1. You must send this appeal and any supporting documents to the Appeals Coordinator (AC) within 30 calendar days of the event that led to the filing of this appeal. If additional space is needed, only one CDCR Form 602-A will be accepted. Refer to CCR 3084 for further guidance with the appeal process. No reprisals will be taken for using the appeal process.

Appeal is subject to rejection if one row of text per line is exceeded.

WRITE, PRINT, or TYPE CLEARLY in black or blue ink.

Name (Last, First)	CDC Number	Unit/Cell Number	Assignment
KORUC, J.	AN1112	DI-226	SM PIR / T SUDT

State briefly the subject of your appeal (Example: damaged TV, job removal, etc.):

SUBMISSION OF FALSE REPORT; STAFF COMPLAINT (CCR TITLE 15 § 3084(6), 3084.5 (a)(4))

A. Explain your issue (If you need more space, use Section A of the CDCR 602-A):

APPELLANT HEREBY ALLEGES THAT OFFICER S. WISWELL (PARN 92082) HAS SUBMITTED AN ACCOUNT THAT IS FALSE IN NATURE AND CONTRADICTORY TO WHAT ACTUALLY TOOK PLACE. THE SUBMISSION OF NAMED OFFICER'S DEVIATION OF EVENTS

B. Action requested (If you need more space, use Section B of the CDCR 602-A):

I WANT RVR # 108330U TO BE REMOVED FROM MY C FIVE FOR STARTERS. IF NOT, I'D REQUEST THAT ON PG. 3, MY APPARENT WAIVER BE CHANGED TO "REQUESTED". I WANT AN I.E. TO INTERVIEW SOME WITNESSES FOR MY PROCEEDS BUT MOST OF ALL, I JUST

Supporting Documents (Refer to CCR 3084.3):

☒ Yes, I have attached supporting documents.

List supporting documents attached (e.g., CDC 1083, Inmate Property Inventory, CDC 128-G, Classification Chrono):

DIAGRAM OF D-1 DISPLAYING
ACTUAL COURSE OF CONDUCT.

ALSO SEE RVR # 108330U

☐ No, I have not attached any supporting documents. Reason:

Inmate/Parolee Signature:

Date Submitted: 5/3/21

☐ By placing my initials in this box, I waive my right to receive an interview.

C. First Level - Staff Use Only

Staff - Check One: Is CDCR 602-A Attached? ☐ Yes ☒ No

This appeal has been:

☐ Bypassed at the First Level of Review. Go to Section E.☐ Rejected (See attached letter for instruction). Date:☐ Cancelled (See attached letter). Date:☐ Accepted at the First Level of Review.

Assigned to:

Title:

Date Assigned:

Date Due:

First Level Responder: Complete a First Level response. Include interviewer's name, title, interview date, location, and complete the section below.

Date of Interview:

Interview Location:

Your appeal issue is: ☐ Granted ☐ Granted in Part ☒ Denied ☐ Other

See attached letter. If dissatisfied with First Level response, complete Section D.

Interviewer:

(Print Name)

Title:

Signature:

Date completed:

Reviewer:

(Print Name)

Title:

Signature:

Date received by AC:

AC Use Only

Date mailed/delivered to appellant: 11/22/21

STATE OF CALIFORNIA
INMATE/PAROLEE APPEAL FORM ATTACHMENT
CDCR-0602-A (REV. 03/12)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Side 1

LAB USE ONLY	Institution/Parole Region	Log #	Category
FOR STAFF USE ONLY			

Attach this form to the CDCR 602, only if more space is needed. Only one CDCR 602-A may be used.

Appeal is subject to rejection if one row of text per line is exceeded. WRITE, PRINT, or TYPE CLEARLY in black or blue ink.

Name (Last, First)	CDC Number	Unit/Cell Number	Assignment
KOANT, J.	AN1162	D1-226	31W PIR / ESUDT

A. Continuation of CDCR 602, Section A only (Explain your issue). CONSTITUTES STAFF MISCONDUCT AS DEFINED IN CDCR TITLE 15 § 3084 (3) AND APPELLANT IN ADDITION TO REQUESTING THE APPEAL BE INVESTIGATED AND ADJUDICATED AS A STAFF COMPLAINT IN ACCORDANCE WITH CDCR TITLE 15 § 3084 (5) (2) (4) ALSO TAKES ISSUE WITH RVR # 1083306 CONTAINING A WAIVER OF AN I.E. AND/OR STAFF ASSISTANT THAT WAS NEVER MADE BY THE APPELLANT. AT NO TIME DID THE APPELLANT MAKE ANY WAIVER IN REGARDS TO THE RVR AT ISSUE. APPELLANT HEREBY REQUESTS THAT HE BE AFFORDED AN I.E. BY THE SHO PURSUANT TO CDCR TITLE 15 § 3315 (d) (1) (A) (3). FOR IF HE IS NOT, THERE IS NO WAY FOR HIM TO RECEIVE A FAIR HEARING. THE SUBMISSION OF THIS OFFICER'S REPORT RAISES GRAVE CONCERNS AND HAS ALARMING IMPLICATIONS FOR INMATES WHOSE DISCIPLINARY HISTORY CARRIES SERIOUS AND SIGNIFICANT CONSEQUENCES IN FRONT OF THE PAROLE BOARD. THERE IS NO SCENARIO IN WHICH THE APPELLANT WILL CONCEDE AN OUNCE OF TRUTH BEING CONTAINED WITHIN S. WISNIEW'S ACCOUNT. THAT REPORT CONTAINS VERBIAGE IN EXCESS AND ESSENTIALLY OFFERS AN EXPLANATION ATTEMPTING TO JUSTIFY A USE OF FORCE RATHER THAN PRESENT A TRUE AND FACTUAL ACCOUNT OF WHAT TOOK PLACE. I FIND IT ALARMING TO CONSIDER HOW FREQUENTLY AN RVR FULL OF FAISLTY MAY HAVE BEEN AUTHORED BY THIS OFFICIAL. SOME OF US INMATES HAVE NEXT TO NOSE AND THIS W02, S. WISNIEW CAN CONSIDER AS COURTESY NOTICE OF MY INTENTION TO SEE TO IT THAT THIS ISSUE BE MADE RIGHT, IN EVERY CAPACITY.

Inmate/Parolee Signature: 

Date Submitted: 5/3/21

STAFF USE ONLY

B. Continuation of CDCR 602, Section B only (Action requested). WANT THE SHO TO HAVE A TRUE AND FACTUAL BASIS UPON WHICH A FAIR AND JUST DECISION CAN BE MADE. I UNDERSTAND VERY WELL THAT AN INMATE DOES NOT POSSESS THE PRIVILEGE TO REQUEST AN OFFICER BE SUSPENDED FROM AUTHORIZING REPORTS, BUT I WANT THE ADMINISTRATION TO BE UNDERSTANDING OF THE GRAVITY THAT FAISLITIES PRESENT TO CERTAIN INMATES, USERS WHO HAVE YEARS OF THEIR LIVES HANGING IN THE BALANCE IN PARTICULAR. IF PATTERNS ARE ALLOWED TO DEVELOP AND PERSIST THAT OFFER NO CONSEQUENCE FOR AN OFFICER WHO SUBMITS A FALSE REPORT, IT WILL BE ENCOURAGED AND OVER TIME, SWEEP UNDER THE RUG. IF NOBODY IS REVIEWING THE INTEGRITY OF REPORTS, THAT LEAVES US AT THE MERCY OF THE AUTHORS PEN AND THEIR DESIRED NARRATIVE. THAT REPORT IS SIMPLY NOT AN ACCURATE ACCOUNT OF WHAT HAPPENED AND IS NOT RIGHT THAT I BE PUT IN THE POSITION TO TAKE ACCOUNTABILITY AND RESPONSIBILITY FOR THE ACTIONS OF AN OFFICER TRYING TO COVER HIS ASS. THAT REPORT NEEDS TO BE STRUCK FROM MY C FILE OR IN THE ALTERNATIVE, AN ATTACHMENT INSORED ATTESTING TO THE FACT THAT S. WISNIEW PRESENTED A FALSE ACCOUNT THAT WAS SUBSEQUENTLY INVESTIGATED AND JUSTLY AND PROPERLY ADJUDICATED. THIS IS A OIA WORTHY ISSUE.

Inmate/Parolee Signature: 

Date Submitted: 5/3/21

C SECTION

STAIRS
B

SECTION

PODIUM

3

2

X = ONLY AND SOLE POINT OF
CONTACT BETWEEN KOHUT
AND MULLS.

- 1 = POINT OF INITIAL CONTACT
- 2 = POINT OF KOHUT PLEANED OUT
- 3 = POINT OF MULLS
- (DOTTED LINE IS KOHUT'S RETREAT)

STAIRS

TV
AREA

STAIRS

TV
AREA

STAIRS

SECTION

A



CALIFORNIA DEPARTMENT of
Corrections and Rehabilitation

OOG ACKNOWLEDGMENT OF RECEIPT AND CLOSURE OF GRIEVANCE

Offender Name: KOHUT, JONATHAN J.

CDC#: AN1162

Date: 05/03/2021

Current Location: PVSP-Facility D

Current Area/Bed: D 001 2226001U

From: Office of Grievances at Pleasant Valley State Prison

Re: Log # 000000114099

The California Department of Corrections and Rehabilitation Office of Grievances at Pleasant Valley State Prison received your grievance on 05/03/2021. Your grievance has not been assigned for review and response because your claim(s) is being handled as specified below.

Claim # 001:

Your claim concerning Offender Discipline; Serious Rules Violation Report is being rejected by Office of Grievances for the reason(s) indicated below:

Your claim concerns an anticipated policy, decision, action, condition or omission by the Department or departmental staff, generally meaning the action has not happened yet. Once a decision or action has taken place and if you are still dissatisfied, you may file a new grievance.

A review of the Strategic Offender Management System (SOMS) on 5/3/2021, reveals your Rules Violation Report (RVR) has not been finalized. You may not grieve a RVR until the RVR has been finalized. Once the RVR has been finalized, you may submit a new grievance.

This serves as your response by the Office of Grievances. If you are dissatisfied with this response, you may appeal the rejection decision to CDCR's Office of Appeals.

Do not resubmit this claim to the Office of Grievances at Pleasant Valley State Prison.

Claim # 002: Request for an I.E.

Your matter concerning Offender Services; Request for Interview, Item, Assistance or Service has been reviewed and is outside the scope of the grievance process. The Office of Grievances has redirected your claim. Your request will be addressed by appropriate staff at Pleasant Valley State Prison as determined by the Reviewing Authority.

This request was forwarded to the D yard Captain.

CDCR SOMS OGTT300
OOG ACKNOWLEDGMENT OF RECEIPT AND CLOSURE OF GRIEVANCE

STATE OF CALIFORNIA

APPEAL OF GRIEVANCE

CDCR 602-2 (03/20)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Page 1 of 2

STAFF USE ONLY

Appeal #: _____ Date Received: _____
 Date Due: _____
 Categories: _____
 Grievance #: 114099

Claimant Name: KOHUT, JONATHAN CDCR #: AN11162

Current Housing/Parole Unit: PVSP Institution/Facility/Parole Region: PVSP/D FACILITY

☐ There are no claims that can be appealed.

☐ The following claims cannot be appealed:

REC BY OOA

MAY 24 2021

Claim #s:

This is the process to appeal the decision made regarding a claim that is not listed above.

Claim #: 001

Explain the reason for your appeal of any claims not listed above. Be as specific as you can.

I am dissatisfied with the response I was given because AN OFFICER SUBMITTING A FALSE ACCOUNT OF AN EVENT, HAS THE POTENTIAL TO COST A MAN YEARS OF HIS LIFE THAT ARE IRREPLACEABLE. IT IS UNETHICAL AND CONSTITUTES STAFF MISCONDUCT PER CDCR, TITLE 15, § 30014(G) AND IT IS MY POSITION THAT IT IS AN ENTIRELY SEPARATE ISSUE FROM WHAT THE INSTITUTION RESPONDED WITH. NOTWITHSTANDING THE ADJUDICATION THAT AT SOME POINT WILL RESULT FROM THE INCIDENT, I DO NOT RELINQUISH THE IDEA OF LIVING AT A FACILITY WHERE FALSE REPORTS GET SUBMITTED DUE TO PATTERNS THAT HAVE DEVELOPED AND PERSISTED BECAUSE THEY OFFER NO REPERCUSSIONS. INCIDENT LOG # 211070 CONTAINS TWO OTHER REPORTS (SUPPLEMENTALS) AUTHORED BY OFFICERS M. REYES (#991440) AND R. BLANCK (#04558) THAT CONTAIN FALSE NARRATIVES AS WELL. A CURSORY GLANCE AT THE 7219'S ATTACHED TO THE REPORT TELL THE TRUTH. INMATES THAT RUNCH EACH OTHER IN THE TOWER AND FACE, LEAVE REDDENED AREAS. THE LACK OF INJURY TO INMATE MILLS AND MAM IS INCONSISTENT WITH THE OFFICERS' CLAIMS I STRUCK INMATE MILLS A SINGLE BLOW, AND DID SO TO DEFEND MYSELF. IF I HAVE TO FILE A PETITION IN THE FRESNO COUNTY SUPERIOR COURT, I WILL. PLEASE INVESTIGATE THE INCIDENT.

Are there documents that would be helpful to support your position? Attach copies of those documents, if you don't have the documents, identify them as best you can below:

YES, THE 7219 MEDICAL REPORTS AND ATTACHED DIAGRAM TELL THE STORY OF WHAT TRULY HAPPENED. I WAS RETREATING THE ENTIRE INCIDENT, EVEN WHEN I STRUCK INMATE MILLS. I WAS ATTACKED, AND THE OFFICERS DIDN'T SEE WHAT HAPPENED I BELIEVE. NEVER, WAS THERE EVEN A SPIT SECOND WHEN WE WERE TRADING BLOWS. I SWUNG A SINGLE TIME, THAT'S IT. I DID ALL I POSSIBLY COULD TO AVOID THE INCIDENT AND I BELIEVE THESE NARRATIVES ARE RETALIATION FOR PRIOR LOGS FILED INVOLVING R. BLANCK AND M. REYES. I HAVE A LOG CURRENTLY IN THE OOA THAT I BELIEVE TO BE THE UNDERLYING MOTIVATION BEHIND THESE REPORTS.

DISTRIBUTION

Original: Claimant's File

Copies: DAI, DAPO, and Claimant



CALIFORNIA DEPARTMENT of
Corrections and Rehabilitation

CLAIMANT APPEAL CLAIMS DECISION RESPONSE

Re: Appeal Claims Decision Response

Offender Name: KOHUT, JONATHAN JOSEPH

Date: 07/21/2021

CDC#: AN1162

Current Location: PVSP-Facility D

Current Area/Bed: D 001 2 - 226001U

Log #: 000000114099

Claim # 001

Institution/Parole Region of Origin: Pleasant Valley State Prison

Facility/Parole District of Origin: PVSP-Facility D

Housing Area/Parole Unit of Origin:

Category: Offender Discipline

Sub-Category: Serious Rules Violation Report

I. ISSUE ON APPEAL

You are appealing the Office of Grievances' rejection of this claim as anticipatory.

II. RULES AND REFERENCES

A. CONTROLLING AUTHORITY

Title 15, sections 3481 and 3487(a)(2).

B. DOCUMENTS CONSIDERED

CDCR Form 602 and CDCR Form 602-2; Rules Violation Report log #7083306.

III. REASONING AND DECISION

The Office of Appeals finds that the rejection of this claim as anticipatory was not proper, as this claim concerns an allegation that Officer Wiswell submitted a false Rules Violation Report under log #7083306. Since this claim concerns an allegation that staff filed a false report, rather than disputing the outcome of the disciplinary hearing, you were not required to wait until the hearing was adjudicated before filing this claim. The record reflects that you first became aware of this alleged issue when you received an initial copy of the report on April 30, 2021, and you filed this claim within the applicable timeframe on May 3, 2021. Therefore, this claim is granted.

IV. REMEDY

The Office of Grievance shall open a new grievance to review and respond to this claim on the merits.

Decision: Granted

After a thorough review of all documents and evidence available at the time of this written decision, it is the order of the Office of Appeals that this claim is granted. This decision exhausts the administrative remedies available to the claimant within CDCR.

Staff Signature	Title	Date/Time
A. Vasquez [VAAL001]	AW (A)	07/20/2021

STATE OF CALIFORNIA
INMATE/PAROLEE APPEAL
CDCR 602 (REV. 03/12)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Side 1

LAB USE ONLY	Institution/Parole Region:	Log #:	Category:
		123815	
FOR STAFF USE ONLY			

You may appeal any California Department of Corrections and Rehabilitation (CDCR) decision, action, condition, policy or regulation that has a material adverse effect upon your welfare and for which there is no other prescribed method of departmental review/remedy available. See California Code of Regulations (CCR), Title 15, Section 3084.1. You must send this appeal and any supporting documents to the Appeals Coordinator (AC) within 30 calendar days of the event that led to the filing of this appeal. If additional space is needed, only one CDCR Form 602-A will be accepted. Refer to CCR 3084 for further guidance with the appeal process. No reprisals will be taken for using the appeal process.

Appeal is subject to rejection if one row of text per line is exceeded.

WRITE, PRINT, or TYPE CLEARLY in black or blue ink.

Name (Last, First): KALUT, JONATHAN	CDC Number: AN1162	Unit/Cell Number: D1-226	Assignment: 360 PTR / TSUDT
--	-----------------------	-----------------------------	--------------------------------

State briefly the subject of your appeal (Example: damaged TV, job removal, etc.):

FINDING OF GUILT; RVR #708330

A. Explain your issue (If you need more space, use Section A of the CDCR 602-A):

WITH RESPECT TO THE POSITION ADOPTED BY THE SMO, I WAS FOUND GUILTY FOR THE ACT OF DEFENDING MYSELF AND IT'S NOT RIGHT. I WAS RELENTLESSLY PUNISHED AND CHALLENGED TO A FIGHT BY AN INMATE WITH AN EXTENSIVE DISCIPLINARY HISTORY, WHO

B. Action requested (If you need more space, use Section B of the CDCR 602-A):

I RESPECTFULLY REQUEST THAT THE FINDING OF GUILT BE VACATED AND OVERTURNED. I WOULD ALSO REQUEST AN OPPORTUNITY FOR THE WITNESSES I WISHED TO CALL TO HAVE THEIR STATEMENTS TAKEN. THE REPORTS SUBMITTED BY THE FLOOR AND TOWER

Supporting Documents: Refer to CCR 3084.3.

☒ Yes, I have attached supporting documents:

List supporting documents attached (e.g., CDC 1083, Inmate Property Inventory, CDC 128-G, Classification Chrono):

DIAGRAM DEPICTING OCCURRENCE

☐ No, I have not attached any supporting documents. Reason:Inmate/Parolee Signature: 

Date Submitted: 5/31/21

☐ By placing my initials in this box, I waive my right to receive an interview.

STAFF USE ONLY

JUN - 1 2021

C. First Level - Staff Use Only

Staff - Check One: Is CDCR 602-A Attached? ☐ Yes ☐ No

This appeal has been:

☐ Bypassed at the First Level of Review. Go to Section E.☐ Rejected (See attached letter for instruction) Date: _____ Date: _____ Date: _____ Date: _____☐ Cancelled (See attached letter) Date: _____☐ Accepted at the First Level of Review.

Assigned to: _____ Title: _____ Date Assigned: _____ Date Due: _____

First Level Responder: Complete a First Level response. Include interviewer's name, title, interview date, location, and complete the section below.

Date of Interview: _____ Interview Location: _____

Your appeal issue is: ☐ Granted ☐ Granted in Part ☐ Denied ☐ Other: _____

See attached letter. If dissatisfied with First Level response, complete Section D.

Interviewer: _____ Title: _____ Signature: _____ Date completed: _____
(Print Name)Reviewer: _____ Title: _____ Signature: _____
(Print Name)

Date received by AC: _____

AC Use Only

Date mailed/delivered to appellant: ____/____/____

STATE OF CALIFORNIA
**MEDICAL REPORT OF INJURY
OR UNUSUAL OCCURRENCE**
CDCR 7219 (Rev. 01/18)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Page 1 of 2

NAME OF INSTITUTION PUSP		LOCATION OF EVALUATION Delta Program		DATE 4-28-21	
REASON FOR REPORT <input type="checkbox"/> ALLEGATION <input type="checkbox"/> ON THE JOB INJURY <input type="checkbox"/> USE OF FORCE <input type="checkbox"/> INJURY <input type="checkbox"/> OTM RETURNS		<input checked="" type="checkbox"/> UNUSUAL OCCURRENCE <input type="checkbox"/> PRE AD/SEG ADMISSION <input type="checkbox"/> R&R <input type="checkbox"/> OTHER			
NAME LAST MILLS FIRST J		CDCR NUMBER BH8082	PERNR / INST. ID # MG	VISITOR ID # (SOMS) MG	
PLACE OF OCCURRENCE Delta 1	DATE OF OCCURRENCE 4-28-21	TIME OF OCCURRENCE 2046	TIME SEEN 2055	RN NOTIFIED TIME MG	PHYSICIAN NOTIFIED TIME MG
BRIEF STATEMENT IN SUBJECT'S WORDS OF THE CIRCUMSTANCES OF THE INJURY OR UNUSUAL OCCURRENCE					

" NO comment "

INJURIES FOUND?	YES / NO
Abrasion/Scratch	1
Active Bleeding	2
Broken Bone	3
Bruise/Discolored Area	4
Burn	5
Dislocation	6
Dried Blood	7
Fresh Tattoo	8
Cut/Laceration/Slash	9
Swollen Area	10
Pain	11
Protrusion	12
Puncture	13
Reddened Area	14
Skin Flap	15
Pre-Existing	16
Other	17
	18

Chemical Agent Exposure? YES ☒ NO

Chem. Agent Exposure Area EX

Decontaminated w/ Water? YES ☒ NO / REFUSED

Decontaminated w/ Air? YES ☒ NO / REFUSED

Self-decontamination Instructions given? YES ☒ NO

Staff issued Exposure packet? YES ☒ NO

Q 15 min. check times

Initial MG	1 st Check MG
2 nd Check MG	Final MG

TIME/DISPOSITION

returned to custody

REPORT COMPLETED BY/TITLE (PRINT AND SIGN)

M. Sharp LUN

M. Sharp

PERNR / INST. ID #

80522

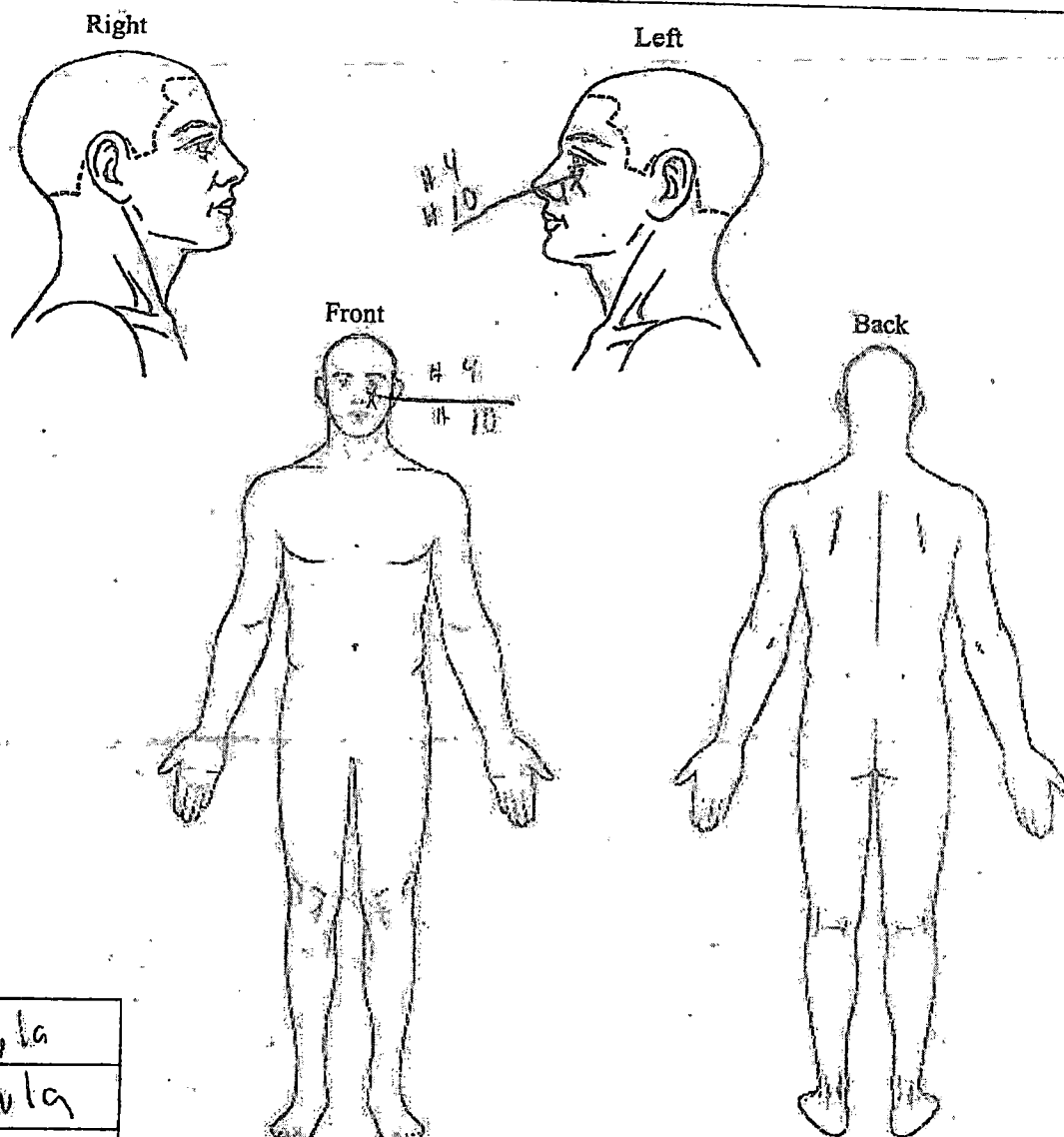
RDOs

S/SUN

ASSIGNMENT AREA

Medical

19614237



STATE OF CALIFORNIA
INMATE/PAROLEE APPEAL FORM ATTACHMENT
CDCR 602-A (REV. 03/12)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Side 1

IAB USE ONLY	Institution/Parole Region:	Log #:	Category:
FOR STAFF USE ONLY			

Attach this form to the CDCR 602, only if more space is needed. Only one CDCR 602-A may be used.

Appeal is subject to rejection if one row of text per line is exceeded. WRITE, PRINT, or TYPE CLEARLY in black or blue ink.

Name (Last, First): <u>KOHUT, JONATHAN</u>	CDC Number: <u>AN1162</u>	Unit/Cell Number: <u>D1-226</u>	Assignment: <u>3/WPT/ISUDT</u>
---	------------------------------	------------------------------------	-----------------------------------

A. Continuation of CDCR 602, Section A only (Explain your Issue): WAS NOT SUPPOSED TO BE IN THE DAYROOM AT ALL. IT WAS MODIFIED PROGRAM AND IT WAS STAFF ERROR THAT ALLOWED MILLS OUT OF HIS CELL AT PULL CALL. AFTER RETREATING ACROSS NEARLY 50 FEET OF DAYROOM, ALL THE WHILE BEING REPEATEDLY SHOUTING AT, FINALLY I HAD NO CHOICE BUT TO KEEP MYSELF SAFE FROM HARM. BECAUSE AT THAT INSTANT, NOBODY ELSE WAS. I WAS THE VICTIM, I WAS PURSUED FOR NEARLY AN HOUR, ALL THE WHILE DECLINING TO ACCEPT REPEATED PRODDING TO FIGHT AND BEING ACCOSTED. OFFICERS' ACCOUNTS ARE SIMPLY TRUE, MILLS WAS ATTEMPTING TO GET UP AGAIN, THAT'S THE REASON FOR MY LEAVING IN. MY CASE FACTORS RENDER ME A TARGET, AND THAT'S WHAT HAPPENED HERE. I'VE NOT RAISED MY HANDS TO ANYBODY IN ANGER AND HIT THEM IN OVER A DECADE, UNLESS FEELING AS THOUGH I MUST TO DEFEND MYSELF. THE SAO ALSO DECLINED MY REQUEST FOR WITNESSES AND THEREBY DENIED ME THE OPPORTUNITY TO ESTABLISH MY SIDE OF WHAT TOOK PLACE AND I THINK THAT IS UNJUST. THE SAO ALSO COMMENTED THAT WHEN I STRUCK MILLS, I BECAME THE AGGRESSOR. I FIND THAT TO BE A PECULIAR CONCLUSION TO REACH WHEN A MAN HAS BEEN REPEATEDLY STALKED AND ACCOSTED FOR NEARLY AN HOUR UNTIL FINALLY BEING PHYSICALLY ATTACKED. BY THE TIME I HIT MILLS, MY ADRENALINE WAS UP AND I WAS REACTING TO INSTINCT IN AN EFFORT TO KEEP MYSELF SAFE. I NEVER BRING VIOLENCE TO ANYONE AND I BELIEVE FINDING ME GUILTY IS SIMPLY UNJUST. I BELIEVE IN THIS INSTANCE FINDING ME GUILTY IS TANTAMOUNT TO SAYING I HAVE NO RIGHT WHATSOEVER TO DEFEND MYSELF.

Inmate/Parolee Signature: [Signature] Date Submitted: 5/31/21

B. Continuation of CDCR 602, Section B only (Action requested): STAFF WERE TRUE AND THAT A SERIOUS KLUDE THAT I REQUEST BE AFFORDED SOME ATTENTION. IN THE ALTERNATIVE TO MY FIRST REQUEST, I'D REQUEST A NEW HEARING, THAT WOULD GRANT MY WITNESSES. THE REPORTS AND ACCOUNTS SUBMITTED BY OFFICERS ARE TOO DAMAGING FOR THE PURPOSES OF BOARD HEARINGS, I'M RESPECTFULLY REQUESTING THAT THEY BE EXTRICATED FROM MY C FILE IN THE INTEREST OF JUSTICE. I THANK THE OFFICE OF GRIEVANCES FOR THEIR TIME AND CONSIDERATION.

Inmate/Parolee Signature: [Signature] Date Submitted: 5/31/21

STAFF USE ONLY

JUN - 1 2021

STATE OF CALIFORNIA
INMATE/PAROLEE APPEAL
CDCR 602 (REV. 03/12)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Side 2

D. If you are dissatisfied with the First Level response, explain the reason below, attach supporting documents and submit to the Appeals Coordinator for processing within 30 calendar days of receipt of response. If you need more space, use Section D of the CDCR 602-A.

Inmate/Parolee Signature: _____

Date Submitted: _____

E. Second Level - Staff Use OnlyStaff - Check One: Is CDCR 602-A Attached? ☐ Yes ☐ No

This appeal has been:

- ☐ By-passed at Second Level of Review. Go to Section G.
☐ Rejected (See attached letter for instruction) Date: _____ Date: _____ Date: _____ Date: _____
☐ Cancelled (See attached letter)
☒ Accepted at the Second Level of Review

Assigned to: _____ Title: _____ Date Assigned: _____ Date Due: _____

Second Level Responder: Complete a Second Level response. If an interview at the Second Level is necessary, include interviewer's name and title, interview date and location, and complete the section below.

Date of Interview: _____ Interview Location: _____

Your appeal issue is: ☐ Granted ☐ Granted in Part ☐ Denied ☐ Other: _____

See attached letter. If dissatisfied with Second Level response, complete Section F below.

Interviewer: _____ Title: _____ Signature: _____ Date completed: _____
(Print Name)Reviewer: _____ Title: _____ Signature: _____
(Print Name)

Date received by AC: _____

AC Use Only

Date mailed/delivered to appellant ____/____/____

F. If you are dissatisfied with the Second Level response, explain reason below; attach supporting documents and submit by mail for Third Level Review. It must be received within 30 calendar days of receipt of prior response. Mail to: Chief, Inmate Appeals Branch, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA 94283-0001. If you need more space, use Section F of the CDCR 602-A.

Inmate/Parolee Signature: _____

Date Submitted: _____

G. Third Level - Staff Use Only

This appeal has been:

- ☐ Rejected (See attached letter for instruction) Date: _____ Date: _____ Date: _____ Date: _____ Date: _____
☐ Cancelled (See attached letter) Date: _____
☒ Accepted at the Third Level of Review. Your appeal issue is ☐ Granted ☐ Granted in Part ☐ Denied ☐ Other: _____

See attached Third Level response.

Third Level Use Only

Date mailed/delivered to appellant ____/____/____

H. Request to Withdraw Appeal: I request that this appeal be withdrawn from further review because; State reason. (If withdrawal is conditional, list conditions.)

Inmate/Parolee Signature: _____

Date: _____

Print Staff Name: _____

Title: _____

Signature: _____

Date: _____



CALIFORNIA DEPARTMENT OF
Corrections and Rehabilitation

CLAIMANT GRIEVANCE CLAIMS DECISION RESPONSE

Re: Grievance Claims Decision Response

Offender Name: KOHUT, JONATHAN JOSEPH

Date: 07/02/2021

CDC#: AN1162

Current Location: PVSP-Facility D

Current Area/Bed: D 001 2 - 226001U

Log #: 000000123815

Claim #: 001

Institution/Parole Region of Origin: Pleasant Valley State Prison

Facility/Parole District of Origin: PVSP-Facility D

Housing Area/Parole Unit of Origin:

Category: Offender Discipline

Sub-Category: Serious Rules Violation Report

I. CLAIM

You are submitting this claim relative to Rules Violation Report (RVR), Log No.: 7083306, dated April 28, 2021, for Fighting. You contend you were defending yourself. You contend the combatant should not have been out of their cell. You indicate you were the victim in the fight. You contend the Reporting Employee's (REs) accounts were untrue. You contend the Senior Hearing Officer (SHO) did not allow you to request witnesses at your hearing. (INACCURATE) (SEE ATTACHED LOG # 123815)

II. RULES AND REFERENCES

A. CONTROLLING AUTHORITY

California Code of Regulations (CCR), Title 15, Section 3005, Conduct.
CCR, Title 15, Section 3315, Serious Rule Violations.
CCR, Title 15, Section 3320, Hearing Procedures and Time Limitations.
Emergency California Code of Regulations (CCR), Title 15, Section 3481, Claimant's Ability to Grieve and to Appeal.
Emergency CCR, Title 15, Section 3484, Allegations of Staff Misconduct.

B. DOCUMENTS CONSIDERED

Grievance and any included supporting documents.
RVR and all related documents.
CCR, Title 15.
Department Operations Manual (DOM).

III. REASONING AND DECISION

Correctional staff is instructed to state clearly everything they observed when reporting an incident. An examination of your grievance issues in conjunction with the review of your supporting documents reveals on April 28, 2021, the RE documented your behavior as they saw it. The REs written report indicates on April 28, 2021, the RE observed you and Mills (CDCR No.: BH8082) striking each other in the upper torso and facial areas with your fists. Staff ordered you and Mills to get down and all complied with the exception of you and Mills, whom continue to strike each other in the upper torso and facial area with your fists. The REs report indicates the severity of the incident necessitated the use of Oleoresin Capsicum (O.C.) spray.

Your allegations of the REs report being untrue will be addressed in grievance log number 126695, Claim 001.

The REs report indicates you and Mills were striking each other. In addition, a review of the Disciplinary Hearing Results (DHR) reveals during the hearing you stated in part, "I punched him one time and knocked him down." If an inmate claims they are the victim of a battery, it has to be clear from the evidence that the alleged victim's response was self-defense. Self-defense means you blocked the blows from the other inmate while attempting to leave the area.

Your statement that inmate Mills should not have been out of Mills' cell is irrelevant. The fact remains; you chose to participate in this violent act. The fact that you chose to participate in this violent act, is sufficient to find you guilty of fighting.

A review of the RVR does not reveal that you requested witnesses when you were served an initial copy of the RVR. In addition, the DHR reveals you did not request witnesses at your hearing. If your request for a witness was denied, the SHO would have documented the reason for the denial on the RVR, pursuant to CCR, Title 15, Section 3315(e)(2). The Senior Hearing Officer (SHO) was contacted in regards to the claim(s) in your grievance and stated, "During the hearing Kohut admitted to punching inmate Mills in the face and knocking Mills down. The REs report also speaks to Mills landing on Mills' back covering Mills' upper torso area with Mills' arms, then Kohut leaned forward in an attempt to strike Mills again, necessitating staff to spray them. At this time Kohut became the aggressor. I do not remember for sure whether or not witnesses were requested and denied during the hearing; however, during a hearing I am usually pretty liberal when it comes to granting witnesses. I don't usually miss that stuff." The evidence suggest you were given an opportunity to request witnesses at your hearing.

Pursuant to the CCR, Title 15, Section 3320(l), you were found guilty based upon a determination by the SHO that a preponderance of the evidence submitted at the hearing substantiated the charge. A preponderance of evidence means the SHO balances the evidence in support of innocence against guilt. If there is more evidence in favor of guilt than innocence, the SHO will find you guilty. The SHO accepts the more convincing of the two. Sufficient evidence exists to support the finding of guilt.

DECISION: Your claim is DISAPPROVED at the Institutional Level of Review. The evidence suggest you were given an opportunity to request witnesses at your hearing. A preponderance of the evidence submitted at the hearing substantiated the charge of Fighting.

Decision: Disapproved

After a thorough review of all documents and evidence presented at the Office of Grievances Level, it is the order of the Office of Grievance to DISAPPROVE the claim.

If you are dissatisfied with the decision of this claim, you may file a 602-2, appeal with the California Department of Corrections and Rehabilitation Office of Appeals.

Staff Signature	Title	Date/Time
M. Faulkner [FAMA006]	CDW(A)	07/01/2021

STATE OF CALIFORNIA

APPEAL OF GRIEVANCE

CDCR 602-2 (03/20)

Page 1 of 2

STAFF USE ONLY	Appeal #:	Date Received:
	Date Due:	
	Categories:	123815
	Grievance #:	123815

Claimant Name: KOVI, JONATHAN CDCR #: AN1162
 Current Housing/Parole Unit: R/SP Institution/Facility/Parole Region: DI-226

☐ There are no claims that can be appealed.

☐ The following claims cannot be appealed:

Claim #s:

REC BY OOA

JUL 19-2021

This is the process to appeal the decision made regarding a claim that is not listed above.

Claim #: 001

Explain the reason for your appeal of any claims not listed above. Be as specific as you can.

I am dissatisfied with the response I was given because I FEEL THAT IT IS EGREGIOUSLY UNJUST IN THIS INSTANCE
CDCR 602 LOG NO. 114099 AND ALL ATTACHED DOCUMENTS AS WELL AS REFERENCED DOCUMENTS ARE INCORPORATE
BY REFERENCE, INCLUDING IN ADDITION AS IF STATED HEREIN. IN CONTRADICTION TO WHAT THE CDW(A) ALLEGES, I
MOST CERTAINLY DID NOT ASK FOR WITNESSES AT MY HEARING; AS LOG # 114099 CLEARLY DEMONSTRATES I WANTED AND WERE
WITNESSES. I MADE THE REQUEST AND THE IT (S/O) ASKED ME WHAT THEY WOULD SAY. THEY WERE NEVER SUMMONED. IN
NUMEROUS CONTRADICTION TO THE ASSERTION OF THE CDW(A) IN THE RESPONSE PROVIDED IN § 114099, I NEVER CHOSE
TO PARTICIPATE IN ANY VIOLENT ACT. THE DEFINITION OF SELF-DEFENSE, AS THE CDW(A) PROFFERS, IS ONE OF MANY NON-
DEFINABLE SCENARIOS AND IRONICALLY DESCRIBES EXACTLY WHAT I WAS DOING MINUS THE BLOCKING OF EYES. I WAS
TRYING TO BACK AWAY AND LEAVE THE AREA WHILE MILLS WAS SWINGING AT ME. AT SOME POINT, AFTER BEING GUNNED
AT REPEATEDLY, MILLS' KNUCKLE GRazed MY LIP AND I STRUCK HIM ONCE. WHILE HE WAS ON THE GROUND, HE THEN GOT
HIS HANDS UNDER HIMSELF ATTEMPTING TO GET BACK UP. I LEANED TOWARD HIM IN VIGILANCE AND WAS THEN
PEPPER SPRAYED. THAT WAS IT, A SINGLE BLOW WHILE I WAS BEING ATTACKED. (CONT'D ON REVERSE.

Are there documents that would be helpful to support your position? Attach copies of those documents, if you don't have the documents, identify them as best you can below:

YES, AS REFERENCED, 602 LOG # 114099; THE CANCELLATION NOTICE; THE 7219'S ATTACHED MOST CERTAINLY DON'T
SUPPORT THE CLAIMS OF THE RE'S. IF WE WERE STRIKING EACH OTHER AS THEY CLAIMED, THERE WOULD BE RED MARKS
ALL OVER THE BOTH OF US. THERE IS A SINGLE MARK ON MILLS' ENTIRE BODY. MY COMPLEXION RETAINS A NATURAL
REDISH HUE UPON MY CHEST AREA AND MY KNUCKLES DO AS WELL. I WAS WORKING WHEN THIS INCIDENT TOOK PLACE
AND PRIOR TO THE INCIDENT I HAD BEEN PUTTING ON AND TAKING OFF ROBBER GLOVES WHICH MAY HAVE CONTRIBUTED
TO THE CONDITION OF MY HANDS.

DISTRIBUTION

Original: Claimant's File

Copies: DAI, DAPO, and Claimant

STATE OF CALIFORNIA

APPEAL OF GRIEVANCE

CDCR 602-2 (03/20)

Page 2 of 2

Claim #: 001 (CONT'D)

Explain the reason for your appeal. Be as specific as you can.

I am dissatisfied with the response I was given because MILLS WAS OUT OF HIS CELL WHEN HE SHOULDN'T HAVE BEEN. I TOLD THE SHO THAT MILLS CAME OUT OF HIS CELL IN AN EFFORT TO START A FIGHT WITH ME AND CONTRARY TO WHAT THE CDW(A) STATES, THAT IS NOT IRRELEVANT. IF THE OFFICER WOULDN'T HAVE ERRONEOUSLY OPENED THE DOOR, THERE WOULDN'T HAVE BEEN AN INCIDENT AT ALL. WHAT I BELIEVE IS HAPPENING, IS THAT THE COLLEAGUE OF THE RE'S IS SUPPORTING HIS COLLEAGUES. THE COLLEAGUE OF THE SHO IS SUPPORTING HIS/HER COLLEAGUE. THIS IS A CASE OF "THE WHATEVER IS GUILTY NO MATTER WHAT." THE SHO HAD TO KNOW FROM THE T219'S THAT THE RE'S WEREN'T SHOOTING IT STRAIGHT. I WOULD HAVE THE CDW(A) WOULD NOTICE AS WELL. MY DISCIPLINARY HISTORY PAYS A PICTURE OF MY PROPENSITY TO "CHOOSE TO PARTICIPATE IN VIOLENT ACTS," AS CLAIMED BY THE CDW(A). THE MANNER IN WHICH THIS RIVER WAS BEEN ADJUDICATED IS ALARMING TO ME. I'VE BEEN FAIRLY PORTRAYED AND FOUND GUILTY WHEN I WAS DEFENDING MYSELF WHICH I HAVE EVERY RIGHT TO DO. IF YOU TAKE A CURSORY GLANCE AT THE DISCIPLINARY HISTORY OF WIMATE MILLS, THAT PAYS A PICTURE AS WELL. THIS PROCESS IS SUPPOSED TO BE JUST AND FAIR, BUT WHAT WAS TAKEN PLACE DIDN'T SPEAK TO FAIRNESS NOR ACCOUNTABILITY. I HAVE NOT BEEN PROVIDED MY CONSTITUTIONALLY PROTECTED DUE PROCESS UNDER THE 14TH AMEND. OF THE U.S. CONST. AND ARTICLE I, SECTION 7 OF THE CALIF. CONST. THIS PROCESS HAS NOT CONSIDERED A TOTALITY OF FACTORS OBJECTIVELY BUT RATHER HANDPIKED AND LYPERFOCUSED ON THE FACT AND STATEMENT OF MY STRIKING MY ATTACKER THEREBY INIQUITOUSLY MANIPULATING THIS PROCESS AND SUPPORTING THE RE'S & SHO. Are there documents that would be helpful to support your position? Attach copies of those documents, if you don't have the documents, identify them as best you can below:

YES, THE HIGHLIGHTED SECTIONS OF THE RECORDS I WAS GIVEN, CLEARLY CONTRADICT EACH OTHER. THE CDW(A) APPARENTLY CLAIMING THAT THE DHS SAYS I DIDN'T ASK FOR WITNESSES YET EVEN THE SHO SAID HE COULDN'T REMEMBER FOR SURE. THAT DOESN'T SOUND DEFINITIVE. AS MENTIONED, I DID WANT WITNESSES AND I ASKED FOR THEM. LIEUTENANT MAY DIDN'T COME WITH THEM BUT I EXTEND ASKED ME WHAT THEY WOULD TELL HIM. AFTER RELATING THE ACCOUNT, THE SHO TOLD ME HE BELIEVED ME FOR THE MOMENT MILLS WAS KNOCKED DOWN, I BECAME THE AGGRESSOR. I DEACREE IF THE DEPARTMENT WON'T MAKE THIS RIGHT, THEN I SHALL SEE THEM IN COURT. AS OF THIS WRITING, THE GOVERNMENT CLAIMS HAVE ALREADY BEEN SUBMITTED.

Reminder: Please attach all documents in your possession that support your claim(s).

Please note that this form and supporting documents will not be returned to you.

Claimant Signature: 

Date Signed: 7/8/21

MAIL TO:

Office of Appeals
Department of Corrections and Rehabilitation
P.O. Box 942883
Sacramento, CA 95811



CALIFORNIA DEPARTMENT of
Corrections and Rehabilitation

CLAIMANT APPEAL CLAIMS DECISION RESPONSE

Re: Appeal Claims Decision Response

Offender Name: KOHUT, JONATHAN JOSEPH

Date: 09/18/2021

CDC#: AN1162

Current Location: PVSP-Facility D

Current Area/Bed: D 001 2 - 226001U

Log #: 000000123815

Claim # 001

Institution/Parole Region of Origin: Pleasant Valley State Prison

Facility/Parole District of Origin: PVSP-Facility D

Housing Area/Parole Unit of Origin:

Category: Offender Discipline

Sub-Category: Serious Rules Violation Report

The California Department of Corrections and Rehabilitation (CDCR) Office of Appeals received this claim on 07/19/2021.

California Code of Regulations, title 15, provides the Office of Appeals 60 calendar days to complete a response. Due to the expiration of time, this response by the Office of Appeals will be the only response.

You do not need to resubmit this claim to the Office of Grievances or to the CDCR Office of Appeals.

Decision: Time Expired

Memorandum



To: Claimant

Subject: **TIME-EXPIRED RESPONSE FROM THE OFFICE OF APPEALS**

Thank you for submitting your appeal for review by the California Department of Corrections, Office of Appeals. Pursuant to Title 15, section 3486(i)(10), if the Office of Appeals is not able to respond to a claim in 60 calendar days, as in this case, then the claim must be answered "time-expired." As a result, the answer provided by the Office of Grievances remains unchanged and this appeal is now closed. No further action will be taken by the Department and no appeal of this action is permitted under the regulations.

Also, pursuant to Title 15, section 3485(e), "The appeal package submitted by the claimant shall be stored electronically by the Department. The CDCR Form 602-2 shall contain a notification to the claimant that the documents submitted will not be returned to the claimant." Therefore, your Form 602-2 and any supporting documents are not included with this response.

However, a copy of your entire appeal package is maintained in your Central File. The process for requesting copies of documents contained in Central Files, often referred to as an *Olsen* review, can be found in the Department Operations Manual, sections 13030.16 and 13030.17.

Thank you,

HOWARD E. MOSELEY
Associate Director

-EXHIBIT #4-

• Government Claim No.#21005089

4.1-2

NOTE: Upon requesting a conformed copy from the DGS00RIM, this document reproduction is what was provided. Two entire sections have been omitted which are the description of circumstances, as well as the explanation of the state's liability. As set forth in the pleadings, administrative remedies have been thoroughly exhausted.

OFFICE OF RISK AND INSURANCE MANAGEMENT
DEPARTMENT OF GENERAL SERVICES

GOVERNMENT CLAIM
DGS ORIM 006 (Rev. 08/19)

11 IN 07 2021

RECEIVED

CLAIMANT INFORMATION	
LAST NAME <u>ROPER</u>	FIRST NAME <u>JONATHAN</u>
MIDDLE INITIAL <u>J</u>	
INMATE OR PATIENT IDENTIFICATION NUMBER (if applicable) <u># A11102</u>	BUSINESS NAME (if applicable)
TELEPHONE NUMBER	EMAIL ADDRESS
MAILING ADDRESS <u>P.O. Box 9500 / D1-2240</u>	CITY <u>CONNINGER</u>
STATE <u>CA</u>	ZIP <u>93240</u>
IS THE CLAIMANT UNDER 18 YEARS OF AGE? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	INSURED NAME (Insurance Company Subrogation)
IS THIS AN AMENDMENT TO A PREVIOUSLY EXISTING CLAIM? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	EXISTING CLAIM NUMBER (if applicable)
EXISTING CLAIMANT NAME (if applicable)	
ATTORNEY OR REPRESENTATIVE INFORMATION	
LAST NAME	FIRST NAME
MIDDLE INITIAL	
TELEPHONE NUMBER	EMAIL ADDRESS
CITY	STATE
ZIP	
MAILING ADDRESS	
CLAIM INFORMATION	
STATE AGENCIES OR EMPLOYEES AGAINST WHOM THE CLAIM IS FILED <u>CDOR; L. MAY R. BLANCHES S. WILSON, M. REYES</u>	DATE OF INCIDENT <u>4/28/21</u>
LATE CLAIM EXPLANATION (Required, if incident was more than six months ago) <u>N/A</u>	
DOLLAR AMOUNT OF CLAIM <u>UNLIMITED VIOLATION, UNLIMITED</u>	CIVIL CASE TYPE (Required, if amount is more than \$10,000) <input type="checkbox"/> Limited (\$25,000 or less) <input checked="" type="checkbox"/> Non-Limited (over \$25,000)
DOLLAR AMOUNT EXPLANATION <u>SHO EXHIBITED BIDS DURING HEARING, OFFICERS FURNISHED REPORTS WHICH LED TO CLAIMANT'S RIR</u>	
INCIDENT LOCATION <u>REASON: VALLEY STATE PRISON; DYER BUILDING 1; PROGRAM OFFICE</u>	
SPECIFIC DAMAGE OR INJURY DESCRIPTION <u>SEVERE EMOTIONAL DISTRESS RESULTING FROM DE RECESS VIOLATIONS. CLAIMANT WAS ISSUED RIR # 1063306 AND SUBSEQUENTLY FOUND GUILTY OF FIGHTING. AS A RESULT OF THIS RIR, CLAIMANT WILL MOST LIKELY BE GIVEN A 5-12 DENIAL FROM THE PAROLE BOARD, IN ADDITION TO HAVING</u>	



CALIFORNIA DEPARTMENT OF
GENERAL SERVICES

Governor Gavin Newsom

11/24/2021

Jonathon J. Kohut AN1162
P.O. Box 8500
Coalinga, CA 93210

RE: Claim 21005089 for Jonathon J. Kohut AN1162 against Department of
Corrections and Rehabilitation

Dear Jonathon Kohut,

Government Claims Program (GCP) staff completed its investigation of your claim
and rejected it for the following reasons.

The claim involves complex issues that are beyond the scope of analysis and legal
interpretation typically undertaken by the GCP. Claims involving complex issues are
best determined by the courts. Therefore, staff did not make a determination
regarding the merit of the claim, and it is being rejected so you can initiate court
action if you choose to pursue this matter further.

If you choose to pursue court action in this matter, it is not necessary or proper to
include the GCP in your lawsuit unless the GCP was identified as a defendant in your
original claim. Please consult Government Code section 955.4 regarding proper
service of the summons.

If you have questions about this matter, please feel free to contact GCP by phone,
mail, or email using the contact information below. Please remember to reference
the assigned claim number (21005089) in your communication.

Sincerely,

A handwritten signature in black ink, appearing to read "Sheila Emami", is positioned above the typed name.

Sheila Emami, Program Analyst
Government Claims Program
gcinfo@dgs.ca.gov

WARNING: Subject to certain exceptions, you have only six (6) months from the
date this notice was personally delivered or deposited in the mail to file a court action
on this claim. See Government Code Section 945.6. You may seek the advice of an
attorney of your choice in connection with this matter. If you desire to consult an
attorney, you should do so immediately.

-EXHIBIT #5-

- Letter to CDCR OIA 5.1.1-4
- Response Letter/AW & CDO M. Martin 5.2.1

1 TRANSCRIPT OF PETITIONER'S CORRESPONDENCE TO CDCR OFFICE OF INTERNAL
2 AFFAIRS, DATED AUGUST 15, 2021, RE: STAFF MISCONDUCT AT PVSP, D FACILITY

3 Dear Sir and/or Madam,

4 I am writing to apprise your office of an issue down here at PVSP
5 that I'm very much hoping can be afforded some attention. I've
6 filed 602's(three altogether related to the incident described
7 below)and requested that OIA be involved but all I was able to
8 be provided was a confidential inquiry that did not reveal the
9 truth I was very much hoping it would. This attempt to get this
10 report and all attachments removed from my C file, is my last
11 hope before I proceed to court.

12 I'm a 46 yr. old lifer serving a 46 yr. to life sentence for a
13 very ugly situation that took place back in 1996. I've been down
14 for nearly 18 yrs. now and the ride has been a difficult one and
15 what I'm incarcerated for certainly doesn't make it easier.
16 Notwithstanding the situation and the specifics, I spend my time
17 in study and education in hopes of being able to earn a parole
18 date hopefully by the time I'm 50. I've been blessed with a youth
19 offender parole consideration which I have no intention of squandering.

20 Back in April of this year, I was working my assigned position
21 as a porter in my housing unit(D1). On the night of the 28th,
22 I was approached by an inmate determined to get into a physical
23 altercation with me. Despite repeated challenges, insults, and
24 crowd inflation;I held my composure and declined to engage in
25 any fight. I was booed, laughed at, called names and everything
26 else that a perceived coward you'd expect to be subjected to,
27 in such a situation in this environment, is in fact subjected
28 to.

29 Eventually, the jeers of people and I believe perceived cowardice
30 on my part, prompted this guy to begin swinging at me. I wasn't
31 struck, and what I did at that moment, was retreat. As I continued
32 to back up, this guy kept swinging at my face for the first 8
33 to 10 swings, I kept effectively out of range. Growing frustrated
34 from not being able to make contact, the guy finally quickened his

1 advance on me enough to slightly graze my lip with his knuckle.
2 When he did, still retreating, I swung a single time and backward
3 momentum notwithstanding, I was able to land the blow that effectively
4 knocked him down.

5 At that moment, I looked at him and he was knocked out for a split
6 second, then his eyes refocused and he immediately put his hands
7 under himself to get up again. Still perceiving potential harm
8 to myself, I leaned toward him to ready myself and at that moment,
9 I was sprayed(O.C.)by Officer Wiswell. This effectively ended
the incident. I was prone out and as I was, I felt pepper spray
hit the back of my head, and my hands.

10 As procedure and protocol dictate, medical staff saw each of us
11 and they completed 7219 forms. We were both issued RVR's and when
12 I received mine, that's about the time I went into shock. If your
13 office could indulge me by pulling up RVR#7083306 with supplemental
14 incident log #21670 it would be greatly appreciated. The moment
15 I read the RVR, I knew that not only was the officer that wrote
16 it extremely dishonest in his report, but that he most likely
17 didn't see anything except the very end. I attribute that to being
18 in the office and the windows are usually covered which obstructs
their view. I immediately filed 602 log no. 114099, alleging staff
misconduct.

19 A few days later, I filed another 602 upon reviewing the incident
20 report package. One thing is clear to me, is that the three officers
21 in the building that night; S. Wiswell, R. Blancas, and M. Reyes
22 are covering for each other in their reports. They are unequivocally
23 in violation of CDCR policy and their reports are extremely unethical
24 and to put it bluntly, lies in their totality. Their description
of the incident consists of nothing more than boilerplate language
that is descriptive of a run-of-the-mill fight.

25 If I thought that was the worst to come, not hardly. On reading
26 the report submitted, I knew I'd need witnesses. I even mentioned
27 it in the 602(1st)I filed, log no.114099(see section B.'action
28 requested'), yet on the date of the hearing, 5/21/21, Lt. May,
the SHO would not call the witnesses I requested(4 total). Then,

1 I see my final copy, the box for witnesses is checked 'none'.

2 Again, staff misconduct.

3 Lt. May when I requested inmates Hernandez, Sedillo, Farley, and
4 Sanchez, asked me, "What are they going to tell me?". I reiterated
5 my account and told the SHO, "They'll tell you the truth." To make
6 a long story short he found me guilty. I tried explaining that
7 I was attacked and that I had the right to keep myself free from
harm. I didn't fight anybody, I swung one time, that's it.

8 When you look at the 7219's, they completely support my account
9 and unequivocally display the dishonesty of the reporting officers.
10 Anybody with 30 days of experience in CDCR, could tell anybody,
11 that inmates do not strike eachother repeatedly to the "face and
12 torso" and leave not a single welt, or reddened area. It doesn't
13 happen, period! It is entirely and absolutely, inconceivable to
14 me, that Lt. May didn't take a quick glance at the 7219's and
immediately become aware of the inaccuracy of the reports submitted
by his subordinates, that's a fact!

15 This entire process has been a complete sham that resulted in
16 a severe miscarriage of justice. The so called 'confidential inquiry'
17 conducted, was a farce as well. They deny me my witnesses at the
18 hearing then show up and handpick their own? What kind of due
19 process is that? This is nothing more than a game of "cover-for-
20 your-colleague" going on at PVSP and the Lt. conducting the inquiry
did the same as the SHO.

21 I've filed a Government Claim as a result and I will be bringing
22 a claim in federal court against these CDCR officials for their
23 blatant, and intentional violations of my constitutional due process
24 rights. These types of faults and practices within the department
25 serve to the serious detriment of those like myself that need
26 to go before the parole board, and they need to be eradicated..
27 I would expect a lot more from so called "peace officers" that
have enormous salaries handed to them on the backs of the tax
payers.

28 I've no intention of going before the BPH, and being accountable

1 for the blatant lies and misconduct of these officers, nor will
2 I relent, until the truth is made clear. These officers lied and
3 their superiors knew it, and made a conscious choice to ignore
4 it, and have me pay the tab for it. Ms. Allison and Mr. Moseley
5 should be informed because if some action isn't taken to remove
6 these lies from my file, they'll be defendants right alongside
these excuses for peace officers down here at PVSP.

7 I very much appreciate your time and attention to this matter,
8 all I did was defend myself and what took place was very unjust
9 and simply not right.

10 Sincerely and Respectfully,

11 /s/ JKohut

12
13 Jonathon Kohut #AN1162
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DIVISION OF ADULT INSTITUTIONS
PLEASANT VALLEY STATE PRISON
P O Box 8500
Coalinga, California 93210-8500



Date : September 27, 2021

To : KOHUT, JONATHAN J. CDCR NO.: AN1162
DFB1-226U
Pleasant Valley State Prison

Subject: **LETTER ADDRESSED TO OFFICE OF INTERNAL AFFAIRS**

This letter is in response to your letter submitted directly to Office of Internal Affairs (OIA), dated August 15, 2021, which was forwarded on September 17, 2021, to my office for review and disposition.

Mr. Kohut, you have circumvented the Inmate Request for Interview (GA-22)/ CDCR Grievance procedure by directing your appeal directly to OIA. Your requests can be properly answered via the GA-22/CDCR Grievance process when submitted to your building staff or deposited in the grievance box at which time it will be routed to the appropriate area for the best response.

The allegations contained within your letter have been adequately addressed through multiple claims, grievances, supervisorial reviews, and second level appeals submitted by yourself regarding all of these matters contained within your letter. Specifically Offender Grievance Tracking (OGT) numbers 000000114099, 000000123815, 000000125056, 000000126695, and 000000146204. A review of Rules Violation Report 7083306, reveals you admit to your active involvement to the charge of fighting, and to striking the additional suspect, knocking him down and advancing towards him, at which time chemical agents were utilized to stop your actions. Additionally in your letter you identify that the other participant was "knocked out" for a split second, which would satisfy the Serious Bodily Injury (SBI) requirements of loss of consciousness, an enhancement in which you were not charged with.

Mr. Kohut, I commend you on your efforts to maintain a positive program while you continue to seek every rehabilitative opportunity presented to you, as your goal is to become a productive member of society. Rehabilitation starts from within, which includes accepting responsibility for your own actions. Once you hold yourself accountable for your own behavior, you will begin moving forward with your life and increase your chances of success.

In the future, I am instructing you to submit a GA-22 or CDCR 602-1 via the proper channels with your concerns and they will be addressed in accordance with departmental guidelines. Your continued failure to comply with this directive will result in the delay of resolution to your request.

A handwritten signature in black ink, appearing to read "M F Martin", is written over a horizontal line.

M. F. MARTIN
Associate Warden
Housing C/D/E/STRH/EEO
Pleasant Valley State Prison

-EXHIBIT #6-

- Response Letter/CDCR Ombudsman 6.1

OFFICE OF THE OMBUDSMAN

1515 S Street, Sacramento, CA 95811
P.O. Box 942883
Sacramento, CA 94283-0001

November 5, 2021

Jonathan Kohut AN1162
PVSP D 001 2 226
PO Box 8500
Coalinga, CA 93210

Subject: **RECEIPT OF CORRESPONDENCE (CASE # 64400)**

Your letter to the Office of the Ombudsman was received. Due to the high volume of inquiries received, the Ombudsman cannot intervene in all individual cases. However, please note that the Office monitors all correspondence to identify systemic issues, which is a critical element of the Ombudsman's roles as a liaison between institutions and Headquarters, and as a policy advisor for the Administration.

- ☒ Your recent letter to the Office of the Ombudsman was received and based on a review of your letter and of the appropriate policies and procedures relevant to your concerns, the Ombudsman has determined that: **your grievance history revealed you attempted several times to have this reviewed and reversed. You were denied at all levels meaning you have exhausted your administrative remedies. You are now free to file a writ and take the matter to court in an attempt to get what you are seeking. Our office is not able to assist you with moving this forward to the courts or provide legal advice. Please proceed to the courts if you feel it is necessary to get your justice you are looking for regarding this event.**
- ☐ A review of the information you provided indicates that you have not exhausted your administrative remedies to resolve your issue and/or staff complaint. In accordance with CCR, Title 15 § 3481, you may file a grievance against any departmental decision, action, condition, or policy which you can demonstrate as having a material adverse effect upon your welfare. Please file a grievance to resolve this matter. If you would like to send a copy, this Office can monitor your grievance for a timely and accurate response. Please note: this Office does not process grievances or appeals, nor does contacting this Office extend your timeframe for filing a grievance or appeal.
- ☐ An inquiry relative to your issue has been forwarded to the appropriate staff for review.
- ☐ No review will be conducted. This issue is outside of the scope of this Office.

Thank you for contacting the Office of the Ombudsman.



S. Jacobs, Ombudsman
Office of the Ombudsman

-APPENDIX A-

- Declaration of Plaintiff

J. Kohut: #AN1162
PVSP/D1-226
P.O. Box 8500
Coalinga, Ca. 93210
In Pro Per

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

JONATHON J. SKOHUT,
Plaintiff,

Case No.

vs.

PLAINTIFF'S DECLARATION IN
SUPPORT OF 42 U.S.C. § 1983/
28 U.S.C. § 1367 CIVIL RIGHTS
COMPLAINT

M. Martin, et al.,
Defendants.

• DECLARATION OF PETITIONER •

I Jonathon J. Kohut, Petitioner in the instant matter, hereby
state and declare the following:

1. That I am at least 18 yrs. of age, a resident of California, and a U.S. citizen.
2. That I am the Petitioner, and true author/compiler of the attached writ petition, memorandum of law/exhibits presented to the Court on my own behalf.
3. That I bring this particular action due to relief sought as well as certain evidentiary standards of review pursuant to CCP § 1094.5(c), (e), and preservation of fundamentally vested rights.
4. That it is my unwavering position that PVSP/CDJR officials have abused their discretion, and insodoing, have violated my rights to both Due Process, as well as Equal Protection under both state, and federal constitutions.

1 55. That on 4/28/21, around 8:45 p.m., I was working as a building porter
2 on D-Facility, bldg.#1, at Pleasant Valley State Prison, in Coalinga, Ca.,
3 an institution of CDCR.

4 6. That as I was wiping a table in the C section side of the dayroom, I
5 was approached by an Inmate Mills(#BH8082), who was in an adrenaline filled
6 state and challenging me to a fight, which I declined. At this point, I
7 looked around for the officers and didn't see them anywhere.

8 7. That as I proceeded to another table, Inmate Mills persisted in his
9 challenging me, balled up his fists raising them, and began to advance on
10 me. My initial reaction was to outstretch my left arm and say to Mills, "stay
11 back man, don't do it."

12 8. That as Inmate Mills advanced on me, I began retreating with my arm
13 outstretched, and at this time he began swinging repeatedly at my face,
14 continuously missing as I backed up. As this was taking place, the officers
15 were not present anywhere that I could see.

16 9. That I had retreated 30-35 feet across the dayroom when Inmate Mills
17 quickened his advance, and in lunging forward, he was able to skim my upper
18 lip with his knuckle at which point I returned a single blow, catching his
19 left orbital/cheek area and effectively knocked him to the ground.

20 10. That it is important to note, that the contact with my lip described
21 (#9), was essentially the initial contact. Prior to that instant, missing
22 blows had glanced off of my outstretched arm only; blows which I felt did not
23 warrant any engagement on my part.

24 11. That it is further important to note, that a split second prior to my
25 lip being skimmed, in my peripheral view, I saw the two officers exit the
26 office.

27 12. That as soon as my fist made contact, my adrenaline spiked and in
28 surveying Inmate Mills at that moment, I watched his eyes refocus, and he
immediately put his hands underneath himself and began to get up.

13. That I do vaguely recall the officers yelling, "get down, get down!",
however my primary focus was on the physical threat I was facing, and
noticing his getting up.

14. That at that moment, I began to lean forward as I arrived at the

1 decision to nudge Inmate Mills back to the ground and thereby neutralize
2 any threat to myself.

3 15. That as I leaned toward Inmate Mills, I was pepper sprayed directly
4 in my eyes which caused me to immediately prone out, face down with my hands
5 hit me in the back of my head and on the backs of my hands.

6 16. That both myself, and my attacker were subsequently seen by medical
7 personnel for 7219 assessments.(Exhibits #1.1,1.2)

8 17. That on 4/30/21 I received a disciplinary RVR(Rules Violation Report),
9 Log No.#7083306 authored by an Officer S. Wiswell which presented an account
10 filled with false depictions and fabrications that were extremely prejudicial
11 prejudicial in nature. (Exhibits##2:1.1-4, 2:2.1)

12 18. That I immediately drafted a 602 and submitted it to PVSP's Office of
13 Grievances on 5/3/21, Log No.#114099.(Exhibit #3.1.1- 6) The incident was
14 being classified as a 'fight'(see RVR), it is my adamant contention that it
15 was self-defense.

16 19. That this 602(#18), attacked the falsities submitted by S. Wiswell and
17 alleged staff misconduct pursuant to 15 CCR, §§3084(g), 3084.5(a)(4), and
18 requested that the 602 be adjudicated as a staff complaint. In addition, I
19 expressed to the OOG, that witnesses would be needed if I were to receive a
20 fair hearing, and that waivers entered by PVSP officials on my behalf be
21 voided.(see Exhib.#3.1.1-2;3:1.5)

22 20. That shortly following the filing of the 602(#'s 18,19), I received a
23 Log Incident Report, #21670 with supplemental reports authored by all 3
24 officers that were in the building at the time of the incident. Upon receipt
25 I noticed that both Officers R. Blancas(floor staff #2), and M. Reyes(Control
26 Booth), presented false narratives as well. I submitted an additional 602
27 asserting that; 1) Alleged observations of all 3 officers were completely
28 unsupported by medical personnels' assessments with respect to documented/
undocumented injuries(Exhib. #1.1,1.2), 2) Staff error played a significant
role in the incident, and 3) Most paramount was that I was defending myself
by warding off an attack.

29 21. That upon information and belief, PVSP/CDCR officials have turned a
blind eye to their colleagues' submissions of false reports, and have denied

1 me relief to which I am legally entitled.

2 22. That on 5/21/21, a hearing was conducted for the purpose af hearing
3 and adjudicating RVR #7083306, charging me with fighting(15 CCR§3005(d)(1))
4 . The hearing was presided over by Senior Hearing Officer Lieutenant May,
5 also present in addition to myself was an officer who stood back at the
6 door to the office.

7 23. That during the hearing I brought several supporting factors to the
8 attention of the SHO that not only brought into question the accuracy of
9 officers' narratives, but that illustrated on my part that I was acting in
10 self-defense and that labelling the incident a fight was an inaccurate
11 mischaracterization. That I pointed out the absence of any RVR's for fights
12 in my minimal disciplinary history, while Inmate Mills was getting into
13 fights with frequency. Also that at the time of the incident, the prison
14 was on a modified programming schedule, Inmate Mills was out of bounds
15 under 15 CCR§3015(a) in being out of his cell in violation of protocol, and
16 subject to disciplinary action.

17 24. That I explained my focus in prison was education, and earning a parole
18 date from the BPH. That I have a very slim disciplinary history, but in
19 terms of what was just and proper, I went far beyond what the law requires
20 in an effort to avoid fighting at all in fact. That under California law,
21 the moment I had apprehension of pending physical harm instilled; I had been
22 assaulted under the law, and had every right to defend myself, yet I still
23 exercised restraint and chose to retreat instead.

24 25. That during the hearing, I requested 4 specific witnesses at which time
25 the SHO inquired as to what they would tell him. That I explained that
26 they would explain that I did everything imaginable to avoid having to fight
27 which was the absolute, categorical truth. That my witnesses were not
28 summoned to the hearing and the SHO subsequently claimed that I had not
29 requested any witnesses.(Exhib. #2.3.4)

30 26. That I was found guilty by the SHO's abuse of discretion which is
31 shown by the SHO's conscious choices in; 1) Refusing to call my witnesses, a
32 unquestionable violation of my due process, 2) The intentional and malicious
33 ignoring of the inconsistencies in the reports, and 3) SHO's perjury in his
34 claiming that I did not request witnesses.(Exhib #5.4) Lieutenant May renewed
35 his claim in a confidential meeting

1 this claim when asked in connection with a confidential inquiry conducted
2 by a Lieutenant Martin. (#29)

3 27. That based on the inconsistencies between medical personnels'
4 observations, staff narratives, and each and every factor brought to the
5 attention of PVSP/CDCR officials/administrators, officials within the
6 department had far beyond a reasonable amount of facts and information at
7 their disposal to not only review, but to reverse, modify, or dismiss the
8 findings pursuant to 15 CCR§3312(b)(1). Yet they still opt to uphold the
9 decision and continue to defend it.

10 28. That in one OOG decision, a CDW(A), M. Faulkner made the claim that
11 Inmate Mills being let out of his cell erroneously, was irrelevant and the
12 602 was denied.

13 29. That as a result of the allegations of staff misconduct, PVSP/CDCR
14 officials conducted a 'confidential inquiry'. This inquiry took place
15 following the RVR hearing and as aforementioned was conducted by a Lieutenant
16 Martin. Upon information and belief, PVSP officials ignored the fact that
17 their colleagues perjured themselves as a result of the CDCR custom that has
18 been allowed to develop and persist over the course of decades, where the
19 inmate is wrong no matter what.

20 30. That during such confidential inquiry, I was interviewed by Lieutenant
21 Martin. The interview took place in the office that the officers emerged
22 from during the incident (#11). During the interview, the office windows
23 were covered and so obstructed, that I was unable to actually point or show
24 the Lieutenant where the incident occurred. That during the interview, I
25 explained at length the fact that Inmate Mills had a single mark on him to
26 the area in which I've maintained the entire while that I struck him a single
27 time. Yet the reports submitted by all 3 officers claim that we were striking
28 striking each other to the "face and torso", which simply did not happen.
Officials' claims are falsities and unsubstantiated by observations of
medical personnel, the account that I have maintained, the truth, is entirely
supported.

31. That eventually a decision was rendered that the Officers had not
violated CDCR policy which I was not surprised to receive. What else that
was not lost on me was that the Chief Disciplinary Officer that ratified the

1 findings of the SHO, was one M. Martin, an Assoc. Warden at PVSP, which
2 poses the question of whether or not this official shares a familial
3 relation with th "Martin" that conducted the 'confidential inquiry'.
(Exhib. # 2.3.9)

4 32. That subsequent to the guilty finding, I filed a complaint with the
5 DGS, a Government Claim(Claim No##21005089), as well as amendments after
6 the confidential inquiry upheld the findings, and on 11/24/21, the claim
7 was rejected by the DGS.(Exhib. #4.1-2) The copies of the actual claims are
8 of poor quality but have still been attached as exhibits.

9 33. That upon being denied relief through the 602/inquiry, I sent a letter
10 letter to CDCR's Office of Internal Affairs which I perhaps should not have
11 sent. The OIA did not respond directly to me, instead they sent the letter
12 I sent them to AW M. Martin, the same CDO that ratified the findings of the
SHO. This letter was hand written but has been transcribed and attached as
Exhibit #5.1-4 for the Court's review.

13 34. That to the best of my knowledge, no other action was taken by the
14 OIA aside from sending the correspondence I sent to AW M. Martin. In turn,
15 I received an extremely patronizing reponse from an individual that takes
16 the position that apparently 'true rehabilitation' does not include one's
right to self-defense.(see Exhib. # 5.2.1)

17 35. That upon receiving the response from AW M. Martin, I contacted CDCR's
18 Office of the Ombudsman. The letter I sent the OIA was included in the
19 mailing and prompted the attached response labelled Exhibit # 6.1 for the
20 Court's review if necessary.

21 36. That I have spent years preparing for the opportunity to go before the
22 BPH.

23 37. That in my personal opinion, I exercised a great deal of restraint in
24 this particular situation when I had every right to engage with physical
force much sooner than I did.

25 38. That I am 46 yrs old currently, and that over the course of my life,
26 my hand (right) has been severely damaged due to repeated injuries called
27 'boxer breaks', that occurred in my youth up until my late 20's.

28 39. That as a result of those breaks, I now have literally my ring and

1 last metacarpals pushed back to such a degree, that my middle knuckle takes
2 on a spiky form that has the potential to seriously damage other men when
3 utilized for those sorts of purposes.

4 40. That over the time incarcerated I've spent, I've yet to see a fight
5 when guys don't leave marks or welts on one another when exchanging blows.
6 That these officers lied and PVSP/CDCR is willfully ignoring it.

7 41. That CDCR officials utilize a sort of template when reporting these
8 types of incidents out of sheer laziness.

9 42. That if Inmate Mills were not out of his cell, there would not have
10 been any incident at all, another factor ignored by officials.

11 43. That on this very same facility, many attacks take place over in D-4,
12 as set forth in the petition. The non-aggressor, never gets issued an RVR.

13 44. That there is literally no difference between the repeated occurrences
14 taking place in D-4, and the instance before the Court save the GP vs. SNY
15 component; I was attacked and they have refused to acknowledge that factor.

16 45. That the SHO's finding that I became the aggressor, is unreasonable
17 and another mischaracterization displaying the lengths went to in order to
18 find me guilty.

19 46. That I do not possess the capacity to switch my adrenaline off on a
20 dime after being attacked; it is beyond my mental capability.

21 47. That when I leaned toward Inmate Mills when he was down, I had no
22 intentions of striking or punching him. I was going to give him a nudge so
23 as to keep him down.

24 48. That at that particular point, I was hoping more than anything, that
25 the officers would intervene but they did not.

26 49. That I truly believe Lieutenant May had his mind set to find me guilty
27 no matter what evidence I presented.

28 50. That it is beyond my comprehension how anyone can look at or review
the narratives submitted by staff (Exhib. #2.2.113) and reach the conclusion
that they are accurate after seeing the 7219's.

51. That it is further beyond my comprehension, how false narratives could
be utilized to find a man with so much to lose guilty of anything.

1 52. That a significant disparity exists amongst inmates who are issued
2 RVR's within the prisons of CDCR, when it comes to inmates who already have
3 a date, and those trying to be found suitable by way of a board hearing.

4 53. That a violent RVR, is the absolute worst kind of RVR one can have
5 prior to going before the board.

6 54. That the BPH places their strictest scrutiny on the 5 yr. period that
7 immediately precedes the suitability hearing.

8 55. That these factors(#52-54), create per se a major disparity amongst
9 the inmates for purposes of Due Process/Equal Protections afforded these
10 inmates and the consequences they receive in connection with a guilty RVR
11 finding.

12 56. That while one inmate may receive 90 days added to their sentence,
13 and have those 90 days restored after a subsequent disciplinary-free
14 period, an inmate with a pending hearing, has bought himself/herself in a
15 best case scenario, the same restoration following the same disciplinary-
16 free period, and in addition at least a three year denial from the board.

17 57. That an inmate going into a hearing who proceeds to take any course
18 that does anything other THAN TAKE FULL RESPONSIBILITY AND BE ABSOLUTELY
19 AND COMPLETELY ACCOUNTABLE FOR ANY AND ALL DISCIPLINARY RVR'S IN THEIR
20 FILE, is essentially dooming themselves to a lengthy denial period, which
21 starts at 3 years.

22 58. That based on the above-mentioned factors(#56-57), Due Process and
23 Equal Protections if I understand these theories correctly, the law says
24 that they need to be commensurate with the actual consequences or the
25 punishment with which an individual is faced with.

26 59. That in either scenario suggested, Due Process/Equal Protection will
27 demand that either individual be provided with specific protections that
28 serve to maintain procedural fairness such as a hearing and the right to
have witnesses testify on one's behalf.

60. That the individual faced with a board hearing is facing a more grave
end result possibility rendering heightened Due Process/Equal Protections
affordance and applications appropriate for that reason.

61. That when accused of a disciplinary violation, an individual in CDCR,

1 has no other option than to depend on his accuser to play by the rules,
2 and to ensure him some measure of Due Process/Equal Protection to which
3 the law entitles that individual.

4 62. That the interests of each party are conflicting in nature, with the
5 accuser controlling the entire adjudication process rendering even a
6 semblance of fairness, deeply controversial.

7 63. That every motivation an accused has serves to show that he did not
8 violate any policy, or that in this case, that he had a fundamentally
9 vested right to act in the course that he did.

10 64. That CDCR officials have no interest in finding people not guilty for
11 the violations CDCR officials accuse them of.

12 65. That the more or longer the process continues, the longer the unfair
13 decisions and practices persist.

14 66. That CDCR officials have not a single measure in place to ensure that
15 individuals faced with RVR 115's, are afforded their rights during their
16 proceedings.

17 67. That whatever the SHO writes, is taken as truth and this instance is
18 a glaring example of why such practice essentially makes a mockery of Due
19 Process.

20 68. That if BPH hearings are transcribed as official quasi-judicial
21 proceedings requiring Due Process protections, than it stands to reason that
22 any proceeding significantly attached or related to such proceedings should
23 rightfully be afforded similar protections.

24 69. That proceedings could be digitally recorded and catalogued for re
25 trieval purposes when required because as it stands now, an SHO is making
26 a claim that I never asked for witnesses when a 602, filed long prior to my
27 hearing tells a different story.(see Exhib.#3.1.1, Sec. B action req'd)

28 70. That these types of situations are a breeding ground for violations of
Due Process by those whose interests conflict, and have been for decades,
and I just happen to be fortunate enough to have filed that 602(Ex.#3.1.1-6)
if I had not I may have a significant issue.

71. That I am beseeching upon the Court that a need for these types of
protections are required if individuals being housed by CDCR are to receive

1 Due Process and Equal Protection during proceedings controlled by parties
2 with conflicting interests to the accused.

3 72. That even a form such as that of the nature in the petition, and the
4 alternative petition suggested remedy, that would cure any conflicting
5 claims of whether or not witnesses were requested.

6 73. That this occurrence, is commonplace in CDCR; they always claim that
7 witnesses were declined or unrequested.

8 74. That the truth of it upon information and belief, is that these are
9 claims being made by officials under pressure to assist their colleagues,
10 not the inmates.

11 75. That if an SHO were to become known as providing fairness to inmates,
12 it would automatically be mischaracterized as an SHO being on the side of
13 an inmates which would doom his workplace political career, upon information
14 and belief of course.

15 76. That I am nearly positive, that if the Court were to review all the
16 602's claiming that they were never provided witnesses that were requested,
17 that they would find that it is not only a common complaint that should have
18 been addressed a long time ago, but also that these types of 602's are shot
19 down and the position of the SHO is upheld because as in this case, the SHO
20 lies and claims the inmate did not request any witnesses, again.

21 77. That in most cases, it ends there, but this is categorically, and
22 unequivocally not that kind of party, and this issue will be pushed until
23 my fundamentally vested rights are recognized and upheld.

24 78. That these people violate individuals' due process everyday on an
25 astronomical scale but the sad reality is that most individuals in here do
26 not have the know-how, or are not able to properly articulate or bring their
27 claims before a court of law in order to obtain the proper relief.

28 79. That I hope Kathleen Allison, Rob Bonta, and R. Godwin are paying
close attention as well as their agents, because I will not let this go until
I have received either a fair hearing or a dismissal of these charges, and
that measures are put in place to make an already extremely unfair process
a little more fair and give it some semblance of having some integrity to it.

80. That this issue may not appear to hold much weight in the big picture,

1 but days and/or years of peoples' lives cannot be replaced, but measures
2 most certainly be put in place that any process that serves to that sort of
3 detriment, is fundamentally fair, and carried out with honesty and integrity,
4 integrity.

5 81. That inmates already at a severe disadvantage with the 'some evidence'
6 standard that is used to convict innocent person after innocent person,
7 upon information and belief.

8 82. That utilizing this standard(#81), an individual could arguably be
9 found guilty of just about anything, in just about any circumstance.

10 83. That I defended myself, and that I did not start any fight, and that
11 what really took place, was that although I didn't start a fight, my hand
12 was forced to finish one, plain and simple.

13 Under the penalty of perjury, pursuant to 28 U.S.C. §1746

14 I hereby declare that the foregoing is true and correct, yet
15 affording an appropriate degree of exceptance to portions set forth upon
16 information and belief which I do in fact believe to be true, and have been
17 set forth in the utmost of good faith.

18 X

19 Jonathon J. Kohut;
20 Petitioner/Declarant,
21 In Pro Per.

22 Dated: 4/21/2022

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JONATHON J. KOHUT

v.

Case Number: 1:22-CV-00472-HBK(PC)

M. MARTIN, et al.

PROOF OF SERVICE

I hereby certify that on 08/29/2023, I served a copy
of the attached FAC & VOLUME OF EXHIBITS,
by placing a copy in a postage paid envelope addressed to the person(s) hereinafter
listed, by depositing said envelope in the United States Mail at
ASP/410-18-5L, P.O. BOX 904, Avenal, Ca. 93204-0904

(List Name and Address of Each
Defendant or Attorney Served)

U.S. DISTRICT COURT
2500 TULARE ST., ROOM 1501
FRESNO, CA. 93721-2201

I declare under penalty of perjury that the foregoing is true and correct.


(Signature of Person Completing Service)

(PLAINTIFF)